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COMMITTEE MEETING
STATE OF CALIFORNIA
INTEGRATED WASTE MANAGEMENT BOARD
PERMITTING AND ENFORCEMENT COMMITTEE

JOE SERNA, JR., CALEPA BUILDING
1001 I STREET
2ND FLOOR
SIERRA HEARING ROOM
SACRAMENTO, CALIFORNIA

MONDAY, NOVEMBER 7, 2005
10:00 A.M.

TIFFANY C. KRAFT, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 12277

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMITTEE MEMBERS

Ms. Rosalie Mulé, Chair

Ms. Rosario Marin

Mr. Carl Washington

BOARD MEMBER ALSO PRESENT

Mr. Gary Petersen

STAFF

Mr. Mark Leary, Executive Director

Ms. Julie Nauman, Chief Deputy Director

Ms. Marie Carter, Chief Counsel

Mr. Mark de Bie, Branch Manager, Permitting & Inspection
Branch

Mr. Michael Bledsoe, Staff Counsel

Ms. Donnell Duclo, Executive Assistant

Ms. Anne Ennesser, Riverside County Waste Management
Department

Mr. Willy Jenkins, Staff

Mr. Howard Levenson, Deputy Director

Ms. Carroll Mortensen, Assistant Director, Legislative and
External Affairs Office

Ms. Beatrice Poroli, Staff

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APPEARANCES CONTINUED

ALSO PRESENT

Mr. George Eowan, CRRC

Mr. Don Gambelin, Norcal Waste Systems

Mr. Chuck Helget, Allied Waste

Mr. Kelly Smith, Coalition for Alternatives to Keifer
Landfill

Mr. Larry Sweetser, Rural Counties ESJPA

Mr. Chuck White, Waste Management

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1 PROCEEDINGS

2 CHAIRPERSON MULÉ: Good morning, everyone.

3 Welcome to the November 7th meeting of the Permitting and
4 Enforcement Committee meeting.

5 There are agendas on the back table there. And
6 there are speaker slips. If you'd like to fill one out,
7 please do so, and hand it to Donnell up front. Also I'd
8 like to ask that everyone turn off or put in the silent
9 mode your telephones and pagers.

10 And, Donnell, could you call the roll, please?

11 SECRETARY DUCLO: Good morning. Members Marin?

12 COMMITTEE MEMBER MARIN: Here.

13 SECRETARY DUCLO: Washington?

14 COMMITTEE MEMBER WASHINGTON: Here.

15 SECRETARY DUCLO: Chair Mulé?

16 CHAIRPERSON MULÉ: Here.

17 Before we get started, I want to introduce and
18 welcome our very newest Board member, Mr. Gary Petersen.

19 Gary, if you want to say a few words. We're just
20 very, very excited that you're joining us today.

21 BOARD MEMBER PETERSEN: Well, me, too. It took a
22 while to get here. Anyway, I'm looking forward to being
23 on the Board and working with all of you. And I'm a
24 recycler basically, and from the old school. And I'm here
25 to see how things are going. And where I can contribute

1 to make things better, I'd like to do that. Anyway,
2 looking forward to it.

3 CHAIRPERSON MULÉ: Thank you. And thank you for
4 being here for our Committee meeting. Really appreciate
5 having you here.

6 Okay. Members, are there any ex partes?

7 COMMITTEE MEMBER MARIN: I'm up to date.

8 COMMITTEE MEMBER WASHINGTON: I'm up to date.

9 CHAIRPERSON MULÉ: As am I.

10 Mr. Levenson, could you give your Deputy
11 Director's Report, please.

12 DEPUTY DIRECTOR LEVENSON: Good morning, Madam
13 Chair and Board members. And welcome, Mr. Petersen.
14 We're glad to have you here. My name is Howard Levenson.
15 I'm with Permitting and Enforcement Division. I have a
16 couple of items for you this morning.

17 First of all, I want to let you know about the
18 Fire Storage Pile Workshop we held last week, the first of
19 three we held down in Fresno in cooperation with the State
20 Fire Marshal. This was recalling regional coordination
21 meetings on the topic of fires in piles of solid waste.
22 We had about two dozen attendees who discussed a number of
23 the different factors that contribute to fires and ways to
24 prevent them and better respond to fires in the future.
25 We had several operators, eight LEAs, four local fire

1 folks, somebody from the Department of Forestry, State
2 Fire Marshal, Regional Water Board, Office of Emergency
3 Services, and Waste Board staff and Air Board. So we had
4 quite a range of folks who are involved in this issue.

5 There were a lot of suggestions that came up,
6 including bringing in code enforcement and local planners
7 to the next two meetings, one of which is this week in
8 Marysville and the other which will be at the end of this
9 month on the 29th in Irvine. Also doing more cross
10 coordination with fire officials, air officials, and LEAs
11 during CEQA hearings and processes, and developing a
12 training curriculum for fire departments and so on. We'll
13 be working with the State Fire Marshal. And I know in my
14 last discussion with him, he intends to convene a working
15 group to look at Title 19, which is the Fire Marshal's
16 regulatory code to see about putting in some requirements
17 for fire plans in the State Fire Marshal Code. So we'll
18 keep you updated on that. That's a good start to that
19 whole activity.

20 Couple of other things I'd like to let you know
21 about that are coming up in January. On January 18th,
22 here I believe in the Coastal Room, we will have our first
23 Landfill Gas to Hydrogen Workshop. This is under the
24 interagency agreement we have with the University of
25 California at Davis to explore the use of landfill gas in

1 various hydrogen products including vehicle fuels. That
2 will be an open workshop. There will be much more on the
3 website about agendas and so on. And it will be an entire
4 day-long event just to explore the status of that
5 potential pathway for the use of gas to hydrogen.

6 In February, we will have two two-day symposia on
7 post-closure land use issues. This is being headed up by
8 Don Dier in his status as a retired annuitant. He's been
9 doing a bang-up job of getting things ready. The first is
10 on February 15th and 16th in Ontario. And the second will
11 be at the end of the month, February 28th and March 1st,
12 in Stockton. At these symposia, the audience will be
13 planners, legal folks, developers, regulators of all
14 types, including us, obviously. And the topics will be
15 technical presentations on regulatory issues, economic
16 issues, case studies, any kind of legal framework for
17 post-closure for projects on closed landfills. So that's
18 something that we have pledged to do. We haven't done
19 anything on this issue for over 10 years in terms of a
20 major public outreach. And there's been a lot of clamor
21 for additional guidance on that.

22 Lastly, for my Deputy's report, I want to mention
23 as you know we are the enforcement agency for San Luis
24 Obispo County. Staff down there, Jeff Hackett, has been
25 out there inspecting the site that we believe has illegal

1 construction and demolition debris stored. And we have
2 issued an Enforcement Order at that activity or at this
3 site on October 3rd.

4 Just last Thursday or Friday, we received an
5 appeal of that Enforcement Order. And since we're the
6 enforcement agency, the hearing panel for the appeal is a
7 body constituted by the Board. So sometime in the next
8 month or so, we will have to convene a hearing. And we'll
9 be working with the Chair's Office per the regulations to
10 establish the logistics and the panel for that. Just
11 wanted to bring that to your attention.

12 With that, that's the end of my report. Be happy
13 to answer any questions.

14 CHAIRPERSON MULÉ: Any questions for Howard?
15 Thank you, Howard.

16 Let's move into our items. Our first item is
17 Committee Item B, Board Item 11.

18 DEPUTY DIRECTOR LEVENSON: Agenda Item 11,
19 Committee Item B, is Consideration of Revised Full Solid
20 Waste Facility Permit Transfer/Processing Station for the
21 North Area Recovery Station in Sacramento County. Bea
22 Poroli will make that presentation for us.

23 MS. POROLI: Good morning.

24 The LEA initially submitted the revised proposed
25 permit on August 5th, 2005. On September 12th, 2005, the

1 LEA withdrew the proposed permit to provide time for
2 additional environmental review. The agenda item was
3 first written prior to the completion of the comment
4 period for the Negative Declaration which ended on October
5 24th, 2005.

6 On November 2nd, 2005, Board staff received the
7 final version of the proposed permit along with the LEA's
8 final determination that the proposed permit is consistent
9 with the Negative Declaration, which was adopted on
10 October 27th, 2005.

11 In addition to the AB 1497 hearing, there was a
12 public hearing held for the adoption of the environmental
13 document. The proposed permit submitted is to allow for
14 the following changes: Increase in the traffic volume;
15 and increase in the maximum permitted daily tonnage. The
16 agenda item was updated on November 2nd, 2005. The
17 updated agenda item and draft Resolution now reflect that
18 all the requirements for the proposed permit have been
19 met, as indicated on page 11-4 of the revised item.

20 Therefore, staff recommends that the Board adopt
21 Solid Waste Facility Permit Decision Number 2005-306
22 concurring in issuance of Solid Waste Facility Permit
23 34-AA-0002.

24 Board staff received a copy of the letter
25 addressed to the Chair dated November 2nd, 2005, from

1 Mr. Kelly Smith. Copies have been provided to all Board
2 members. Staff is available to answer questions
3 pertaining to Mr. Smith's letter. In addition, the LEA
4 and the operator are present to answer any questions you
5 may have.

6 This concludes staff's presentation.

7 CHAIRPERSON MULÉ: Okay. We do have one speaker
8 slip here from Mr. Kelly Smith. Mr. Smith, would you like
9 to address the Committee, please.

10 MR. SMITH: Thank you, Board members?

11 CHAIRPERSON MULÉ: Good morning.

12 MR. SMITH: Committee members, good morning.

13 Thanks for this opportunity to address what I
14 think is a very important waste facility permitting issue,
15 a problem in enforcement, which I think dates back quite a
16 few years, I would venture to say, before the tenure of
17 any of the people on the Committee today possibly.
18 Certainly before the year 2000.

19 What was happening was that facilities were under
20 permits, which you guys issued, and then violating those
21 permits regularly, consistently, and significantly. That
22 is, they would take more waste than they were permitted to
23 take. And then it was only when they got busted that they
24 had to go and get a permit. That's the way it worked.
25 And as a matter of fact, it became so consistent a

1 practice it was an underground policy to approve that. It
2 was called the permit enforcement policy which really
3 should have been entitled "permit non-enforcement policy,"
4 because it was only enforced when they got caught and
5 somebody made them revise their permit.

6 Now obviously that's utterly backwards from the
7 way it's supposed to work. Solid waste facilities, places
8 taking garbage in big piles have obvious impacts to
9 health, safety, and the environment. That's why we're
10 here.

11 So we have this permit process that is supposed
12 to evaluate those impacts, assure the public's health and
13 safety, and then they start operating. That's not what
14 was happening. The State Auditor found that was the case
15 in the State Auditor's report in the year 2000. The Board
16 made attempts to revise its regulations to end that
17 practice, while still allowing facilities the flexibility
18 to be able to take extra waste or to operate in exceedance
19 of its permit conditions in emergency events, that is
20 earthquakes, that kind of thing, to take waste that would
21 result on an emergency basis.

22 At that time, I objected to those as having too
23 many loopholes. But at least it was a step in the right
24 direction. Well, here we are five years later and a
25 permit revision application which is a model for the same

1 abuses now recurring again, and the need to do something
2 about it. Whether you start here or you start after this,
3 I hope you'll take a look at it.

4 Sacramento County entered into a contract with
5 Sacramento City to start taking something like 25,000 tons
6 a day of city waste into this facility. Then it decided
7 that it would start the process of permitting to do that.
8 That's the same violate now, permit later procedures that
9 we've seen in the past.

10 So this whole process up to date here now is a
11 game of catch up essentially with the legal obligations
12 that facility is supposed to be operating under. I would
13 like to just focus today on one aspect of that in
14 particular that I think is the case. And that is the fact
15 that when you permit these facilities or there's a
16 significant change in the operations of the facilities,
17 the operator is supposed to do environmental review. We
18 have the Environmental Quality Act. And the idea there is
19 that as a rational process, we looked at the impacts to
20 the environment before we started doing it. Because after
21 the fact, it's hard to change.

22 So obviously that should be done before this
23 permit is brought to you folks. That wasn't done. This
24 permit was brought to you folks, and then they decided to
25 do environmental review. That's my understanding of it.

1 Now, I've called carefully your regulations as
2 they stand today. There is a vagueness in there, I will
3 admit, to what's required of the LEA and the proponent by
4 the time -- in that period between the application being
5 submitted to the Waste Board and what you're doing today,
6 which is concurring, not concurring, or whatever, not
7 acting on the permit that has been submitted.

8 I notice, however, that in the regulations that
9 you're considering in the later agenda item that they, in
10 fact, would tighten up those loopholes. And I think if we
11 have to put it to a court, if they take the time to wade
12 through all this stuff, that you would have to see that
13 CEQA requires environmental review before approval, and
14 that approval in this case is the act of submitting it to
15 the Waste Board. That's the first discretionary action.
16 If we don't have CEQA and environmental review conducted
17 before that fact, that it makes a mockery of that process.

18 So we object to the concurrence of this permit at
19 this time. I don't know what to do about it. That's what
20 you're there for. But that's our position. Thank you
21 very much.

22 CHAIRPERSON MULÉ: Thank you, Mr. Smith.

23 Does staff want to address Mr. Smith's comments?

24 DEPUTY DIRECTOR LEVENSON: Yes. We'll make a
25 couple of comments probably in tandem here. I want to --

1 although Mr. Smith didn't really mention it, I do want to
2 raise the issue of the stipulated agreements that were
3 issued for this facility a couple of months ago and that
4 the Board has and our Executive Director have expressed
5 some concern about in terms of the clarity to the
6 Executive Director's authority to revoke or modify one of
7 those agreements. We talked about this at the last Board
8 meeting, and you all expressed your concern about that.

9 In response to that, we have sent out an all-LEA
10 e-mail providing additional guidance on implementation of
11 those provisions, and we have discussed with the Legal
12 Office instituting a rulemaking to clarify that. So right
13 now we're in the planning stages. We'll probably have an
14 informal workshop, and I'll be sending a memo to you
15 shortly to outline that. But we do plan to start that
16 forthwith.

17 Mr. Smith has also raised -- brought an issue
18 about kind of when does a discretionary action take place
19 on the part of the LEA relative to CEQA and the permit.
20 I'll turn it to Michael for some response on that.

21 STAFF COUNSEL BLEDSOE: Good morning, Madam
22 Chair, members of the Committee. Michael Bledsoe from
23 Legal.

24 I think the question before you that Mr. Smith is
25 raising this morning is in this situation did the LEA

1 submit a proposed permit to the Board before it had
2 completed the CEQA process. The ultimate answer to that
3 is no because of the way this particular permit was rolled
4 out. The LEA submitted a proposed permit to the Board on
5 October 5th. Ultimately completed its CEQA review on
6 October 27th. That's the date on which the LEA adopted
7 the Negative Declaration. And then the LEA subsequently
8 submitted a revised proposed permit to the Board after it
9 had adopted the CEQA document. I believe that was on
10 October 28th, the following day.

11 BRANCH MANAGER DE BIE: It's our understanding
12 the LEA sent it on the 28th after the 27th when they
13 adopted it. But we actually received it, Bea, on the 2nd?
14 So we actually got it in the mail on the 2nd.

15 STAFF COUNSEL BLEDSOE: Thank you.

16 So what that means is that the LEA did submit its
17 final proposed permit to the Board after it had completed
18 the CEQA process. So, you know, there's no CEQA violation
19 that one could argue with at this point.

20 CHAIRPERSON MULÉ: Okay. Thank you, Michael.

21 Any questions?

22 COMMITTEE MEMBER MARIN: I think I'm going to
23 have more questions as we talk on Item Number 13. But I
24 take to heart Mr. Smith's comments, you know. And you're
25 not here every single time that we deal with some of these

1 proposed changes. I believe this Committee tends to be
2 pretty precise when we feel that they're putting the cart
3 before the horse. But I think the next item will give
4 us -- will enable us to tighten up the regulations.

5 From a technicality perspective, in fact what the
6 Board is considering now is a completed application. So
7 what is before us as a Committee and then the Board is a
8 completed application, with everything, CEQA and
9 everything revised. I can appreciate your concern, but in
10 fact by the time we're looking at it, it is a completed
11 application. And the CEQA is there.

12 So with that, Madam Chair, I don't see any reason
13 for us not to concur with the issuance of this permit.
14 But I would certainly like to have more of a discussion on
15 Item 13. Therefore, that's my motion.

16 CHAIRPERSON MULÉ: Okay. So I have a motion to
17 approve Resolution 2005-306 Revised. Do I have a second?

18 COMMITTEE MEMBER WASHINGTON: Second.

19 CHAIRPERSON MULÉ: We have a motion by Board
20 Member Marin, seconded by Board Member Washington. Would
21 you please call the roll?

22 SECRETARY DUCLO: Board Members Mulé?

23 CHAIRPERSON MULÉ: Aye.

24 SECRETARY DUCLO: Washington?

25 COMMITTEE MEMBER WASHINGTON: Aye.

1 SECRETARY DUCLO: Marin?

2 COMMITTEE MEMBER MARIN: Aye.

3 COMMITTEE MEMBER WASHINGTON: Madam Chair, let me
4 assure Mr. Smith I don't know what happened post-2000 or
5 whenever it was, but I can assure you this Board won't
6 allow those type of practices to continue anywhere in the
7 state of California. It's unfortunate that you guys had
8 that experience at that time. But we're here to fix
9 whatever we can and to make things better. So hopefully
10 as Madam Chair Marin says, through Item 13 we can help get
11 there.

12 CHAIRPERSON MULÉ: Thank you. And this item can
13 be placed on the consent agenda. Thank you. Thank you,
14 Bea.

15 Okay. Our next item is Agenda Item 12.

16 DEPUTY DIRECTOR LEVENSON: Thank you, Madam
17 Chair. This is Consideration of a Revised Full Solid
18 Waste Facilities Permit Disposal Facility for the Badlands
19 Sanitary Landfill in Riverside County. Just a few minutes
20 ago, you should have all received a revised copy of this
21 agenda item in hard copy. And just for members of the
22 audience, there are additional copies on the table in the
23 back. So this is the item that we will be working from.
24 This revised item is what we'll be working from this
25 morning. We'll try to walk you through the changes

1 between what was published in BAWDs and what you have
2 before you now. Willy Jenkins will be making the initial
3 presentation.

4 MR. JENKINS: Good morning. Also here for this
5 item is Steve Moise and Laurie Holk of the LEA and Anne
6 Ennisser of the Riverside County Waste Management
7 Department.

8 CHAIRPERSON MULÉ: Thank you for being here.

9 MR. JENKINS: Item 12 is for Consideration of a
10 Revised Full Solid Waste Facilities Permit for Badlands
11 Sanitary Landfill in Riverside County.

12 The proposed permit will allow the following:
13 Change hours for receipt of refuse waste to 4:00 a.m. to
14 8:00 p.m. Monday through Saturday and to 24 hours per day,
15 seven days per week operation for maintenance and
16 ancillary activities; increase traffic volume to 612
17 vehicles per day; reduce the permitted landfill area from
18 previous 1,093.2 acres to 246 acres; increase the design
19 capacity from 27,959,140 cubic yards to 30,386,332 cubic
20 yards; change in facility depth to 275 feet below ground
21 surface; change in closure date to 2016; and addition of a
22 waste diversion and recycling park.

23 As part of the approval process, there were two
24 public meetings held for adoption of the CEQA documents.
25 And also there was also an AB 1497 public hearing

1 conducted.

2 Board staff has determined that all the
3 requirements for the proposed permit revision have been
4 fulfilled, including conformance finding and JTD
5 completeness. Regarding State Minimum Standards, Mr. de
6 Bie will address that issue.

7 BRANCH MANAGER DE BIE: Thank you, Willy.

8 Mark de Bie With Permitting and Inspection. I
9 asked Willy to turn it over to me because this is not our
10 typical scenario relative to State Minimum Standards.

11 Willy conducted a couple inspections out at the
12 site. One was a regular 18-month inspection. And then he
13 did a focused pre-permit inspection in October. At the
14 time of that first inspection, he noted a couple issues,
15 and actually four various issues. And when he went back
16 in to do the pre-permitting inspection, three of the four
17 have been corrected. There was just the one remaining
18 issue. And it had to do with how recycling salvaging
19 activities were being conducted at the site.

20 There's a history of salvaging that has occurred
21 at the site. However, Willy was observing that there had
22 been a shift on how actually where it was being conducted
23 and how it was being conducted. The State Minimum
24 Standard relative to salvaging indicates that the
25 salvaging should be conducted as approved by the EA. And

1 we were not seeing anything in the record that we were
2 aware of that the EA had actually approved the way that
3 the recycling and salvaging was occurring at the site. We
4 were aware because we were in the process of working with
5 the LEA on revising the solid waste facility permit that
6 the proposed RDSI that came up associated with the
7 revisions to the permit did fully describe how the
8 activities were occurring on site. So we were assured
9 that the LEA had reviewed this. And when the permit was
10 issued, they would basically be on record as formally
11 approving how the current recycling and salvaging
12 activities occurred. We were not clear on whether they
13 had actually given their go ahead to the operator prior to
14 that RDSI coming through revisions.

15 Spoke with the LEA today to affirm whether or not
16 they felt that they had indeed approved the activities as
17 Willy had observed. And they indicated to me that for all
18 intents and purposes they had. They viewed this activity
19 as just a modification to what had been previously
20 occurring at the site. They hadn't noted it as an issue
21 in their inspection reports, and so they felt that was
22 evidence that they had accepted it and have basically for
23 all intents and purposes approved that activity.

24 So based on that assessment, we can now find that
25 the site is in compliance with the requirement that those

1 salvaging requirements or activities be approved by the
2 LEA. And specifically I'm referring to Section 2017 -- or
3 20710(b) which states in part salvaging as approved by the
4 EA shall be conducted in a planned controlled manner. So
5 we are able to confirm that the EA has actually approved
6 that activity.

7 So based on that, we would currently recommend
8 that the Board go ahead and concur on the proposed permit.
9 We would revise Resolution 2005-307, the last whereas, to
10 indicate that the Board does find the facility consistent
11 with State Minimum Standards.

12 As Willy indicated, the LEA and the operator are
13 here if you have any questions.

14 CHAIRPERSON MULÉ: Okay. We do have some
15 questions.

16 Madam Chair.

17 COMMITTEE MEMBER MARIN: Yes, I do. I'd like to
18 talk to the operator, if he or she is here. Would you
19 please come forward? Can you state your name for the
20 record, please?

21 MS. ENNESSER: Sure. Anne Ennesser, Riverside
22 County Waste Management Department.

23 COMMITTEE MEMBER MARIN: Thank you for being
24 here.

25 I want to ask specifically about the practice of

1 salvaging. What was happening, and what is your
2 understanding that will happen now?

3 MS. ENNESSER: What had been happening and what
4 currently is happening, we have a system where we have a
5 metals recycling area at our site. In our proposed
6 permit, we do call out a new waste diversion and recycling
7 park. It will be in a different area than the activities
8 are currently taking place in. Try to put all of our
9 recycling activities in one area. Make it a little easier
10 for customers to come in and out of the area.

11 Right now, we do have it set up not next to the
12 active working face. It's in a different area. But any
13 metallics that come into the site, we try to recycle
14 anything that we can. That's the kind of activity that's
15 taking place. Every once in a while, we'll have a
16 customer come in. They'll dump a load. And if there's a
17 substantial portion of metallics there, our traffic
18 direction program will direct them or have our on-site
19 personnel take the metallics to the area.

20 COMMITTEE MEMBER MARIN: What she explained is
21 exactly what we need to have them do?

22 BRANCH MANAGER DE BIE: Yes. That coincides with
23 our understanding of the current practice and what they're
24 planning to do.

25 COMMITTEE MEMBER MARIN: Good. I just want to

1 reflect that on the record. Because, you know, we take
2 very seriously violations to State Minimum Standards. And
3 you had had no violations, and then just before you're
4 requesting a permit, you have seven. Is that seven or
5 five? Something like that. So we take that very
6 seriously.

7 If I understand -- and the reason why I wanted
8 you to be on the record and ask how you guys are going to
9 go from now on, so we don't see a repetition of this. So,
10 you know, sometimes people have maybe the notion we're not
11 very strong here. We are. And we want to make sure that
12 people follow the law, more importantly. There is a
13 reason why we have the laws. And when violators for one
14 reason or another choose not to follow the law, it is our
15 right and our obligation to enforce it.

16 So the other question if I may, Madam Chair. Why
17 a 24-hour request? I don't understand that.

18 MS. ENNESSER: That is not for handling waste.
19 Well, it could be, technically. Let me explain.
20 Sometimes we do have incidents where our hazardous waste
21 load checking program, for example, will have a load come
22 in and we'll have a load that can't be buried right away.
23 Perhaps there's an investigation that needs to be done,
24 and they could be out there well after operating hours.
25 We want to leave that opportunity open for us to work

1 through the night if we have to to clean up any kind of
2 hazardous waste load checking, let's say, incident that
3 happened to prepare the site to be open the next morning.
4 So if we have the flexibility to be open 24 hours a day to
5 take care of anything that may come up, that would help us
6 out a lot. And of course if it did occur, we would notify
7 the LEA, and they would know that would be happening.

8 COMMITTEE MEMBER MARIN: Now, I have not
9 personally visited your site, but it says that it's open
10 space. You're not very close to any home nearby?

11 MS. ENNESSER: That's correct.

12 COMMITTEE MEMBER MARIN: Because at 4:00 in the
13 morning when you're going to start accepting trash, it
14 could be very disruptive. But since I haven't been there,
15 I'll take the word of the Chair that there are no homes
16 that will be awakened in the middle of the morning. Okay.
17 Thank you very much.

18 COMMITTEE MEMBER WASHINGTON: Madam Chair.

19 CHAIRPERSON MULÉ: Yes, Board Member Washington.

20 COMMITTEE MEMBER WASHINGTON: Where you guys are
21 proposing to build the diversion and recycling part, was
22 there a request by U.S. Fish and Wildlife that you guys do
23 a survey on that area?

24 MS. ENNESSER: On that particular area, we aren't
25 that far into the design process on that. What we are

1 doing with this particular permit is to call out the area
2 that we foresee --

3 COMMITTEE MEMBER WASHINGTON: So it won't effect
4 the area where --

5 MS. ENNESSER: The area where we're proposing I
6 believe is already undisturbed. It's not near a blue
7 lined stream, so I don't foresee there being any need for
8 that in that particular area.

9 CHAIRPERSON MULÉ: Okay. Are there any other
10 questions or comments?

11 COMMITTEE MEMBER MARIN: Can you change your name
12 from Badlands Sanitary?

13 MS. ENNESSER: Good Lands.

14 COMMITTEE MEMBER MARIN: Yeah. Exactly. I'm
15 thinking Badlands, who would ever want to be there? I'm
16 kidding.

17 Madam Chair, I would like to move Resolution
18 2005-307.

19 CHAIRPERSON MULÉ: With the revision.

20 COMMITTEE MEMBER MARIN: With the revision.

21 CHAIRPERSON MULÉ: The final whereas.

22 Do I have a second?

23 COMMITTEE MEMBER WASHINGTON: Second.

24 CHAIRPERSON MULÉ: We have a motion by Chair
25 Marin, seconded by Board Member Washington.

1 Please call the roll.

2 SECRETARY DUCLO: Members Marin?

3 COMMITTEE MEMBER MARIN: Aye.

4 SECRETARY DUCLO: Washington?

5 COMMITTEE MEMBER WASHINGTON: Aye.

6 SECRETARY DUCLO: Mulé?

7 CHAIRPERSON MULÉ: Aye.

8 That passes unanimously. And we'll put that on
9 the consent agenda as well.

10 And I just want to bring this up while we're on
11 the subject of permits. There seems to be some issues in
12 terms of timing. And Mr. Smith brought up an issue of
13 timing which we are acutely aware of. And then there's
14 another issue of timing that we've discussed in terms of
15 when we receive an application versus starting that clock
16 of 60 days. The Board or the staff has little authority
17 over stopping that clock.

18 And I don't know, Howard, if you want to address
19 that. What would be the remedy to that? Because it seems
20 that there's a lot of issues in terms of an operator
21 submitting an application. They don't have all the
22 information in. Oftentimes, our staff is scrambling at
23 the eleventh hour in the morning, day of Committee meeting
24 to get all the information together. And so, Howard, I'm
25 just wondering how we can address that. Can we address

1 that, and how can we address that? Thank you.

2 DEPUTY DIRECTOR LEVENSON: Thank you, Madam
3 Chair. Those are important questions, and they are ones
4 that we have grappled with for a long time. There's at
5 least two issues that are derived from that. And Mark or
6 Michael may want to comment on others.

7 One is the 60-day clock. Once we get a proposed
8 permit, we have 60 days to act. And given the scheduling
9 of the Board meetings, in some cases that may mean we get
10 a permit in, say, September and it can't be scheduled for
11 November. We're forced to hear it in October, which means
12 we have to be working very quickly to get everything ready
13 for agenda items and make sure that all the findings can
14 be made and so on. That's one issue.

15 We have raised that to the Legislature, and there
16 have been proposals before the Legislature, some have
17 reached the Committee hearings, to fix that, but there's
18 never been any resolution legislatively. That's something
19 that would have to be dealt with statutorily. And we have
20 raised that on a number of occasions. And Carroll
21 Mortensen from our Legislative Office has continued to
22 raise that through proper channels at the administration.

23 The second issue is that we as the Board cannot
24 reject an applicant's proposed permit as being incomplete
25 or incorrect. That's something the LEA does. But we are

1 unable to do. The clock starts. We may not have complete
2 information. We may find something that we have questions
3 about. And we go back and forth with the LEA and the
4 operator during that, whatever it turns out to be, 60 or
5 usually less days to correct that. That's why very often
6 you will see a revision the morning of or a couple days
7 beforehand when we finally clarify that information. And
8 in most cases, we're able to work it out, but in some
9 cases we cannot. But, again, that's another statutory
10 change that would be needed to provide the Board with that
11 authority to reject those proposed permits. Okay

12 CHAIRPERSON MULÉ: Thank you, Howard.

13 And, Carroll, I understand that you do have some
14 language that you've introduced to the Legislature in the
15 past.

16 ASSISTANT DIRECTOR MORTENSEN: Yes?

17 CHAIRPERSON MULÉ: Maybe we can revisit that.

18 ASSISTANT DIRECTOR MORTENSEN: Absolutely?

19 CHAIRPERSON MULÉ: And see what we can do about
20 that.

21 COMMITTEE MEMBER WASHINGTON: What happened to it
22 in the past, Carroll?

23 ASSISTANT DIRECTOR MORTENSEN: Carroll Mortensen
24 with the Legislative Office.

25 It's been tried a couple different times.

1 There's issues with, you know -- especially on the
2 complete permit issue, that's kind of something that can
3 be up for debate. That hit some roadblocks. You know,
4 the 60, if you extend it out to 90 days, there's issues if
5 we would get something just as late on a 90-day clock as
6 we would with a 60-day clock. These things need to work
7 in concert together. Just never been able to meet a
8 meeting of the minds on that issue, but we'll keep trying.

9 COMMITTEE MEMBER WASHINGTON: It's never been
10 introduced by a legislator or --

11 ASSISTANT DIRECTOR MORTENSEN: It's been in a
12 bill, about three years ago it was. But --

13 COMMITTEE MEMBER WASHINGTON: What happened?

14 ASSISTANT DIRECTOR MORTENSEN: Didn't make it out
15 of --

16 COMMITTEE MEMBER WASHINGTON: So it didn't get
17 out of Committee?

18 ASSISTANT DIRECTOR MORTENSEN: Didn't make it out
19 of the Committee.

20 COMMITTEE MEMBER WASHINGTON: Wow.

21 ASSISTANT DIRECTOR MORTENSEN: It was also in a
22 bill with a lot of other things that were more
23 controversial.

24 COMMITTEE MEMBER WASHINGTON: And I was going to
25 say probably was pushed down into some others. Because

1 what we probably should do is take a couple of our own
2 issues and raise them in legislation of its own, instead
3 of trying to put it in with other things to kind of run
4 the -- I have no clue how that would work out.

5 But I believe that what Rosalie is talking about
6 would certainly give some teeth to this Board. And we've
7 all raised the concern to how far and how much we can do.
8 And I think this would kind of help us get where we need
9 to be and have some authority do some things here. And so
10 if it takes, you know, a couple of bills just with
11 Integrated Waste language in it, we might just need to go
12 that route to see how far we can get without it being, you
13 know, entwined with other language for other things.

14 ASSISTANT DIRECTOR MORTENSEN: There's always
15 that danger. And you are well aware of sometimes once it
16 gets out there, other people tend to add and subtract
17 things out of it.

18 COMMITTEE MEMBER WASHINGTON: It's all about
19 managing. And before I leave this Board, I would
20 certainly like to be a part of that to make sure those
21 folks understand that this is something that will give
22 this Board more authority to help protect the health and
23 safety of the constituents they're serving in the state of
24 California.

25 ASSISTANT DIRECTOR MORTENSEN: Understood. We'll

1 work through the Agency and the Governor's Office to put
2 this on the priority list and see what we can get done.

3 CHAIRPERSON MULÉ: Thank you, Carroll. Appreciate
4 it. Thank you, Howard.

5 Our next item is Agenda Item 13.

6 DEPUTY DIRECTOR LEVENSON: Our lucky number.

7 I'm very pleased to introduce this important
8 rulemaking item this morning. I'd like to give some
9 introductory context and then turn it over to Mark de Bie
10 who will give you a Power Point presentation in some
11 detail, kind of walk us through all of the various issues.

12 These permit implementation regulations, which we
13 also call Package A, are the first of three planned
14 permit-related regulation packages that the Board has
15 directed staff to work on. This particular package
16 addresses the mandate of AB 1497, the Montaez bill, that
17 the Board adopt regulations that define the term
18 "significant change in the design or operation of a solid
19 waste facility that is not authorized by the existing
20 permit."

21 It also implements additional direction provided
22 by the Permitting and Enforcement Committee at your
23 November 2004 meeting. At that meeting, you directed
24 staff that along with implementing the provisions of AB
25 1497 we should include a number of other opportunities to

1 improve existing permit regulations and provide more
2 consistency among our different permit regulatory
3 packages.

4 Specifically, the Committee directed staff to
5 address six issues: One, significant change in the
6 modified permit process; two, public noticing and hearing
7 requirements. These are both deriving from AB 1497. In
8 addition, four other issues: The relationship of solid
9 waste facility permits to local land use; application
10 requirements for listing public notices or meetings, kind
11 of the community outreach issue; who would notice
12 five-year permit reviews; and also to look at requirements
13 regarding surprise random inspections.

14 As we've documented in the item, this package has
15 gone through a very extensive informal review process.
16 And I think it's very fair to say industry and LEA
17 stakeholders participated very actively in this informal
18 process. We've had frequent dialogues with the project
19 team via workshops, meetings, written correspondence. And
20 everything has been posted on our very accessible website.

21 Our last informal public workshop which was held
22 on August 22nd here at the CalEPA building which generated
23 many comments, that particular workshop also was audio
24 broadcast around the state. And we had four
25 teleconferencing connections so that people did not have

1 to necessarily travel up here to make their comments.

2 The draft regulations before you today
3 incorporate staff's responses to the primary comments that
4 we've received at this workshop and via the other
5 commenting kinds of venues.

6 Before I turn it over to Mark, I'd like to make a
7 couple of final points. First of all, regardless of any
8 difference of opinion about the particular language in
9 these draft regulations, I think the staff team working on
10 this has been outstanding. And I think everyone involved
11 would acknowledge that: Mark de Bie; Bobbie Garcia, who's
12 here in the audience; Becky Williams, who is conducting a
13 training class today. They've just been totally
14 outstanding, and they conducted this informal process in
15 an exemplary manner. I don't think we could ask for a
16 better team.

17 Second, I do want to note an issue of timing. We
18 are asking for your direction today to initiate that
19 formal rulemaking starting with a 60-day comment period.
20 Let me make a couple points about that. Typically, we ask
21 for a 45-day comment period. But this rulemaking is
22 complex and important, and we want to ensure that
23 stakeholders have sufficient time once it's formally
24 noticed to assess and comment on the draft regulations.
25 So we're asking for 60 days.

1 Second, I want to note even if you provide this
2 direction today, that doesn't mean the 60-day period will
3 start tomorrow. It typically takes us about two months or
4 a little more to prepare the formal rulemaking package,
5 write up the initial Statement of Reasons, and get it to
6 the Office of Administrative Law to get their approval to
7 start the process. So the formal process would not start
8 before the turn of the year at best, probably mid-January,
9 even a little bit later.

10 And this means, in the interest of keeping
11 everybody busy and fully employed, that stakeholders will
12 actually have all of Thanksgiving, Christmas, and New
13 Years holidays to be reviewing the proposed language,
14 sharpening their pencils for when the formal language
15 comes out in late January/February.

16 With that, I'll turn it over to Mark. We'll have
17 an extensive Power Point presentation this morning.

18 BRANCH MANAGER DE BIE: Thank you, Howard. Mark
19 de Bie with Permitting and Inspection.

20 And, you know, I have no issues with the number
21 13. I was born on the 13th and a Friday. So for me it's
22 pretty lucky.

23 COMMITTEE MEMBER WASHINGTON: Hey, Mark, now we
24 understand.

25 (Thereupon an overhead presentation was

1 presented as follows.)

2 BRANCH MANAGER DE BIE: You always knew there was
3 something. Now you know.

4 We do have an extensive Power Point presentation
5 to give you the overview as well as some of the details on
6 the regs. This presentation is available through the
7 Board's website. It was posted last week, I believe. I
8 think you just got copies of a letter that we received
9 late last week or just this morning?

10 MS. GARCIA: Sunday.

11 BRANCH MANAGER DE BIE: Erica Sweeny with Green
12 Action sent us communication on Sunday, so you have that
13 in your hands I believe.

14 Howard gave a very good overview of what we've
15 done so far with the regulations, so I won't spend too
16 much time on here. But just to reemphasize this is the
17 first of three packages. We did a very informal process
18 to just figure out what sort of concepts do we want to
19 address in regs, and through that process ended up finding
20 a number of them we thought initially would be regulatory
21 or candidates for a regulatory process and decided we
22 could do it through training and guidance. It narrowed
23 down to about 20 or so and this the first set of six.

24 We do have a plan the Committee directed us to
25 implement relative to the other two. We're a little off

1 on that plan because of some time delays relative to this
2 package. But the plan did take into account that when we
3 started the formal process on the first package, then we
4 would start the informal process on the second package.
5 So we hope to do that and start the second package
6 sometime at the beginning of next year. So you don't want
7 to overwhelm everyone with too many regs going on at once.
8 We'll take that into consideration.

9 --o0o--

10 BRANCH MANAGER DE BIE: As Howard indicated, it
11 was an extensive informal process with lots of
12 stakeholders. I appreciate you recognizing the team. But
13 in addition to Board staff, we also had a team of LEAs
14 that worked hand in hand with us, met face to face, as
15 well as on conference call. And in my experience, this a
16 bit unique to have the people that will actually implement
17 the regs be there right up front giving us advice and then
18 counsel relative to issues on the actual implementation of
19 the regs and how it would work or not work. So we
20 appreciate all the LEAs on the team and their
21 participation.

22 All the information relative to the regs have
23 been put up on the web page so that we have a very
24 transparent process. People can see who's commented, our
25 response to those comments. All of that information has

1 been posted prior to this meeting.

2 --o0o--

3 BRANCH MANAGER DE BIE: We sent out, for example,
4 the fact that we were meeting today. We sent out over
5 1,000 written notices. We've also maintained a database
6 of people that want to be contacted through e-mails and
7 other mechanisms. We have pretty good confidence people
8 are aware of the web presence for this web package. But
9 we do find people that are unaware. And, for example,
10 Erica Sweeny with Green Action was unaware. So when we
11 identified her through another mechanism, we pulled her in
12 and got her involved. And so she's fully linked in, I
13 believe. So we continue our outreach effort during the
14 informal process. We expect to do that through the formal
15 process, too.

16 --o0o--

17 BRANCH MANAGER DE BIE: Basically, this package
18 deals with six concepts. Some of them, as Howard
19 indicated, came out of 1497. But the other concepts came
20 from other direction that the Board had provided us in the
21 past. AB 1497 indicated that the Board needs the regs to
22 define significant change. We're doing that in
23 conjunction with the finding of modified permit process,
24 which is designed to deal with changes that are not
25 significant. We have a process that's called a revised

1 permit process to deal with significant changes.

2 Actually, right now all changes to permit go through
3 revised.

4 Once we define significant change, we thought we
5 should have a process to deal with those that are not
6 significant. So we came up with a modified permit
7 process. There's a linkage there.

8 1497 also indicated that we should do regs to
9 refine the whole LEA noticing and meeting requirements
10 that are new for revised permits. And, again, there are
11 only for revised permits in 1497. However, the Board gave
12 staff direction to look at applying the requirements that
13 the Board had implemented through the
14 construction/demolition and inert debris regs, and one of
15 those was a hearing requirement for new permits. So that
16 has been added in, not because of 1497, but because of
17 Board direction relative to new permits.

18 Issue three, relationship on solid waste facility
19 permit and local land use came out an awareness of Board
20 staff that LEAs were not handling the land use permits
21 that were submitted to them as part of the solid waste
22 facility permit package in the same way. They were
23 handling it in a very inconsistent way. So we wanted to
24 clarify what the preferred approach would be. And that's
25 what we attempted in these regs. I will give you more

1 detail on that as we go through.

2 Application requirements for listing public
3 notice and meeting is an issue that has basically spun
4 from the Board's request that they be provided information
5 relative to any opportunities that the surrounding
6 community may have or not have relative to solid waste
7 facility permits. And so to get better information to
8 provide that to the Board, staff has included the
9 requirement as part of the application package that the
10 operator would include a list of all hearings and notices
11 that they were aware of. So we would be able to glean
12 that data and report it to the Board. Sort of an
13 environmental justice slant to it, so we think it aligns
14 with what we understand is going through Agency right now
15 in terms of environmental justice.

16 The five-year permit review is sort of a fix-it
17 piece. Some tiered permits -- we have full and
18 registration and standardized, as the Committee is aware
19 of. Some of those permits require the Board to notice the
20 operator of their requirement to apply for a five-year
21 review. Some require the LEA to notice them. We wanted
22 to have it a consistent approach, so we're indicating in
23 these regs that the LEA would be doing all of the
24 noticing. So it comes from one source.

25 And then surprise random inspections was

1 something that the Board asked us to put in this package.
2 We had originally put it in a later package, but it moved
3 up in priority per the direction of the Board. Right now,
4 LEAs are required -- in the LEA certification regs, it
5 indicates LEAs may conduct inspections in such a way
6 they're unannounced and that the operators don't know
7 they're coming. Basically, we're indicating in this they
8 shall do it. It's not an option. They need to develop an
9 inspection program that has that as part of it.

10 We do allow for those instances where it's just
11 not possible to just show up and do an inspection. For
12 example, military bases that have landfills or transfer
13 stations, you can't just show up at the gate and expect to
14 get in. So we do allow for those circumstances.

15 So those are the six concepts that we have
16 addressed in this package.

17 --o0o--

18 BRANCH MANAGER DE BIE: Relative to significant
19 change, if you look at AB 1497, it requires that the Board
20 define not just the two words, "significant change," but
21 the phrase, "significant change in design and operation of
22 a solid waste facility that's not authorized by the
23 existing solid waste facility permit." And that's key
24 because that's how staff addressed their requirements to
25 define or make definitions. It not just deals with

1 significant change, but deals with the fact it's a change
2 to the design and operation as well as issues of whether
3 or not it's authorized or not authorized in the solid
4 waste facility permit. That's how we approached it.

5 Again, we utilized the permit modification
6 process for those that are less than significant. So we
7 do define significant change. We have carried forward
8 what's in existing regs which we refer to as a decision
9 tree. Basically, the LEA reviews a set of criteria to
10 determine whether or not the change that's coming to them
11 in an application is, indeed, significant or if it's
12 something less than significant.

13 I think this is a bit redundant in the fact that
14 we are basically addressing the hearings as well as
15 looking at hearing requirements for new permits per the
16 CDI regs. So we are saying we are doing that.

17 --o0o--

18 BRANCH MANAGER DE BIE: Again, the solid waste
19 facility permit and the local land use, we didn't get a
20 lot of concerns or questions about this as we went through
21 the rulemaking. We are just recently aware that there may
22 be some issues, but we haven't received that formally as
23 yet. So once we do get a better understanding of what the
24 issues are on that, there may be some adjustments during
25 the formal process, but they haven't come to us yet.

1 What we're approaching here is that when the land
2 use approval is submitted to the LEA as part of the
3 application package, the LEA will verify that indeed it
4 has been submitted, but when they review the solid waste
5 facility permit to determine it's correct they do two
6 things. Is it complete? Are all the pieces there? Is it
7 correct? Does it describe a facility that can comply with
8 all the requirements? Does it match their understanding
9 of the facility? That sort of thing.

10 We're indicating in these regs that the LEA need
11 not determine that the solid waste facility permit is
12 actually consistent with the land use permit. Because
13 what we were finding is LEAs were reviewing the land use
14 permit and then forming opinions on whether or not the
15 facility would comply with the land use approval. And if
16 they determined in their opinion that it would not comply
17 with the land use approval, they were indicating that the
18 application was not correct and would basically reject the
19 application and not process it. We wanted to indicate to
20 the LEAs in this reg package that the job of interpreting
21 the land use approval should be left to those that issued
22 the land use approval, the local government entity that
23 has done that.

24 However, we were aware and are aware that there
25 is a need for the land use people to be aware of what's

1 happening in the solid waste facility permit application
2 process. So what we have added in is a requirement that
3 that application form that's submitted to the LEA shall
4 also be sent to the land use authority. So then the land
5 use authority hopefully will see there's something going
6 on, a request being made to the LEA, and they can take
7 action as necessary to ensure that there's continued
8 compliance with their land use approval. So by increasing
9 the level of communication, we hope that the appropriate
10 entity will pick up the gantlet and deal with the land use
11 issues and not have the LEA do that. So that's the
12 approach we're taking in the regs.

13 --o0o--

14 BRANCH MANAGER DE BIE: The application tracking
15 is we had shifted from what we had previously proposed in
16 that there would be a recordkeeping requirement. Now
17 we're shifted in this set of regs that the operator would
18 include a listing in their application. So it would be
19 application by application list and not an ongoing list.
20 And that's in response to the comments that we received
21 from the stakeholders.

22 --o0o--

23 BRANCH MANAGER DE BIE: The five-year review, as
24 I indicated, we're indicating that the LEA is to do all of
25 the five-year review noticing and not the Board.

1 --o0o--

2 BRANCH MANAGER DE BIE: And then surprise random
3 inspections, again indicating that the expectation of the
4 Board is that LEAs will develop and maintain an inspection
5 program that ensures that whenever possible the
6 inspections are conducted in a manner that does not
7 provide the operator with prior notice or to anticipate a
8 date and time.

9 --o0o--

10 BRANCH MANAGER DE BIE: We're going to spend some
11 time on significant change, modified permit, and the
12 noticing, because that's where we got the largest amount
13 of interest and concern from stakeholders during the
14 informal process. So I want to make sure that the
15 Committee is aware of how we've modified the regs in
16 response to those comments and the current form of the
17 regs.

18 One of the general comments we got is that we're
19 not defining -- we're going beyond 1497 in the scope of
20 the regs. And as I indicated, yes, 1497 is two of the six
21 concepts. And, yes, we are doing other things beyond
22 1497. And that's consistent with our understanding of the
23 Board's direction. So we haven't responded beyond that,
24 just to reiterate that's the intent of the regs. That's
25 the scope of the regs to go beyond 1497.

1 --o0o--

2 BRANCH MANAGER DE BIE: The stakeholders
3 indicated that we failed to define significant change. We
4 were doing it through a decision tree process. So there
5 was not a stand-alone definition of significant change.
6 So in response to the stakeholders' comments, we now do
7 have a stand-alone definition of significant change.

8 Our definition takes into account the fact that
9 California is a very large state. There's big sites,
10 little sites. There's urban sites. There's suburban
11 sites. There's all kind of activities occurring in the
12 state that the LEAs and the Board regulates. One shoe
13 does not fit all. Our definition addresses that issue.
14 It recognizes that a change at one site might be
15 significant, but at another it might be considered to be
16 less than significant. It continues on the approach that
17 is in current regs of a methodical process, a decision
18 tree process, so we just extended that process out.

19 --o0o--

20 BRANCH MANAGER DE BIE: Here is the definition
21 that currently exists in the proposed version of the regs.
22 This is the stand alone definition that the commentators
23 have indicated that the informal draft had not included.
24 So it is a change in design and operation. Again, 1497
25 indicates that's what significant change needs to be

1 directed to is design and operations.

2 And it's a change where the LEA has determined
3 pursuant to 21665, which is the decision tree mechanism,
4 this methodical approach, that for changes of such
5 consequence that the solid waste facility permit needs to
6 include further restrictions, prohibitions, mitigations,
7 or some other measure that is designed to adequately --
8 and I'm adding is designed. It's not in the definition.
9 But it's that adequately protect public health, public
10 safety, ensure compliance with State Minimum Standards, or
11 to protect the environment.

12 And let me just emphasize that the LEAs write
13 conditions in the permit not just to protect the
14 environment, but they have a broader mandate. They have a
15 mandate to ensure the facilities comply with State Minimum
16 Standards and that those facilities protect public health
17 as well as safety. Some public health issues, some public
18 safety issues you do not find in a CEQA review, for
19 example. They don't come up as, you know, potential
20 impacts necessarily. But the LEA has that broader
21 mandate. So we hold open that some of the conditions that
22 the LEA would want to put into the permit to deal with
23 this significant change could be associated with
24 non-environmental protection issues, those public health,
25 safety, and State Minimum Standard issues.

1 --o0o--

2 BRANCH MANAGER DE BIE: This is a couple graphics
3 that we came up with to explain how this process works.
4 An operator wants to make a change. We picked perhaps an
5 insignificant change. They have a dozer that's blue.
6 They want to change it to yellow or vice versa. We just
7 picked a graphic. Sorry.

8 They apply to the LEA. They come to the LEA.
9 Actually, there's a step in here we just added prior to
10 going to print on these regs where there's some
11 consultation with the LEA between the applicant and the
12 LEA to determine what kind of approval might be necessary.
13 But eventually there'll be an application to the LEA. And
14 then the LEA would review that and determine what kind of
15 approval process is required.

16 Let me back up a little bit. Significant change,
17 that definition is linked to whether or not a permit needs
18 to be revised. It is the threshold to say what kind of
19 approval the LEA is required to put that change through to
20 go ahead and review it and approve it. So if you have
21 significant change, statute indicates that that must be
22 handled through a permit revision. So basically it's how
23 you figure out what process you're going to use to approve
24 it.

25 --o0o--

1 BRANCH MANAGER DE BIE: This is the decision tree
2 that we have in regs. Basically, when the application
3 comes in, the LEA needs to answer all six of these
4 questions, or maybe just three and then move on. But the
5 first set of questions are the same questions that
6 currently exist in regs, and we've tried to refine them a
7 little bit to be more clear. But we didn't try to change
8 the intent of them at all.

9 But the first question is whether or not this
10 change is consistent with CEQA, or does additional CEQA
11 review need to be done? Is it consistent with all the
12 statute and standards? And is it consistent with the
13 permit? If the LEA finds that CEQA is fine, the standards
14 are all solid, and there's nothing in the permit that is
15 inconsistent or in conflict with this, then the LEA finds
16 this is a non-significant change and can approve it
17 through an RIF amendment process, which is a 30-day
18 process. Very quick process. That process exists today.
19 We're not creating that process. That's an existing
20 process.

21 Really, on the first three questions we just
22 ended up refining that first question about CEQA to be
23 more clear what we meant by consistent. And the rest are
24 the same.

25 However, let's say the LEA looks at this change

1 and says there's a condition in the permit that would be
2 in conflict with this requested change. Then they would
3 come down to question 4 and 5. Is the conflict in the
4 permit a non-material conflict? Is it basically a
5 paperwork kind of problem? If I approve this change,
6 would it result in some actual, real, physical change
7 happening at the site, or is it just a simple paperwork
8 kind of correction, typographical correction, that sort of
9 thing? If that's true, then I can change the permit --
10 because the permit has a problem in it, I can change the
11 permit through a modified permit process because it's not
12 significant.

13 If this change has nothing to do with design and
14 operation because remember the phrase is "significant
15 change in design and operation," if it's not related to
16 design and operation -- maybe it's a reference to a
17 document in the permit. Perhaps there's a reference to a
18 WDR. That WDR has been updated. The operator wants that
19 new reference in the permit. It's not directly linked to
20 design or operational aspects potentially. And so that
21 could potentially be approved through a modified permit.

22 Pretty much we're looking at any changes to the
23 permit could be done through a modified permitted process
24 unless, and then you drop down to six, is there a reason
25 for the LEA to put in some kind of condition, prohibition,

1 restriction that needs to go into the permit to ensure
2 that public health, safety, and the environment as well as
3 consistency with standards is maintained? And if the LEA
4 determines that there is a need to put that into the
5 permit over and above what's there now, then the LEA's
6 determining that change is actually significant.

7 CHAIRPERSON MULE: Mark, what would be an example
8 of that?

9 BRANCH MANAGER DE BIE: If the operator has a
10 permit currently for 100 tons per day to come through the
11 gate and there's CEQA review that supports that. There
12 may be additional CEQA review to support an expansion in
13 the tonnage coming through the gate up to 200 or 300, but
14 there's an increase in tonnage. And it's found that if
15 the site goes beyond 200, which is the request, if the
16 site went beyond 200, there could be potential significant
17 impacts. Could be problems with traffic or dust or noise
18 or whatever based on the CEQA review. The LEA would
19 choose to limit the tonnage to 200 to ensure that there
20 would not be these impacts. So that would be an example
21 of putting in a limit in the permit that's designed to
22 prevent potential significant impacts.

23 Thank you for asking questions. I should have
24 said as I go through, ask questions as you need to,
25 because it's pretty involved in terms of the shift that

1 we're making here.

2 COMMITTEE MEMBER MARIN: Are we going to have
3 staff go through the entire presentation? Or should we
4 take one at a time and see if there are people in the
5 audience that want to deal with this particular item? I
6 don't know, Madam Chair.

7 CHAIRPERSON MULÉ: I don't know. I think we
8 should go through the presentation.

9 DEPUTY DIRECTOR LEVENSON: Most of the rest of
10 this presentation is about this particular issue and the
11 modified permit process. I think we'll be pretty much 98
12 percent done just to get through that.

13 CHAIRPERSON MULÉ: Issues one and two are the
14 primary issues, so I think we should probably go through
15 the presentation.

16 BRANCH MANAGER DE BIE: I just wanted to indicate
17 to the Committee if you had a question for clarification
18 and stuff, we can deal with that.

19 --o0o--

20 BRANCH MANAGER DE BIE: Moving on then, basically
21 using that previous decision tree, the LEA determines what
22 kind of approval process would be required for that
23 particular requested change. And it could be an RFI
24 amendment, modified permit process, or revised permit
25 process. These are just kind of some of the key aspects

1 of each of those processes.

2 RFI is a 30-day process. It's an LEA only
3 review. And it does not effect the permit. There's
4 nothing in the permit that would need to change in the RFI
5 amendment process.

6 These regs do increase in level of noticing.
7 When an LEA receives an application for an RFI amendment,
8 the LEA would do more than what they currently do in terms
9 of noticing the community relative to the fact they're
10 processing an RFI amendment. And there's no LEA meeting
11 associated with them processing an RFI amendment.

12 Modified permit process would be a 180-day
13 process. The 180 days comes out of statute, and it's
14 relative to a revised permit process. So we just picked
15 up that same time frame so you don't have one process is
16 180, one is 150, and you have all the inconsistencies. So
17 we wanted to try to create a process that were similar to
18 each other.

19 It would require LEA as well as Board review,
20 because we are now touching the permit, the permit the
21 Board did concur on at one time. And there is a higher
22 level of -- or excuse me. There is the same level of
23 noticing for a modified permit as with an RFI amendment
24 process. But it is increased over -- that RFI amendment
25 process notice is a higher level than what currently

1 exists, and there would be no LEA meeting again.

2 And then the revised permit process is pretty
3 much what we have right now operating under current
4 statute. It's 180-day process, LEA and Board review.
5 There is the required 1497 notice, and there is a LEA
6 meeting requirement, a 1497 meeting requirement, because
7 we're dealing with a significant change.

8 We are trying to add some flexibility in these
9 regs to allow for what we refer to as substitute meeting.
10 I'll share some detail of that a little bit later.

11 And just to remind you again, the modified permit
12 process does not exist in current reg. It is a new
13 process, and it's a process again designed to deal with
14 permit changes that are less than significant,
15 non-significant changes.

16 --o0o--

17 BRANCH MANAGER DE BIE: There was a comment about
18 the previous version of the regs were being set up in a
19 way that all changes would need to go potentially through
20 a 180-day process. So we changed the regs to indicate
21 that if an operator consults with an LEA and up front they
22 agree this change that would be coming to the LEA does
23 match the RFI amendment process, then through agreement
24 with the LEA a much shorter time frame for approval could
25 be agreed to. And so 30 days is what's in the current

1 reg. But if the LEA and the operator agree, it could be
2 five days or two days before they implement the change.

3 The timing is basically when they apply prior to
4 actually implementing the change. So 30 days prior to
5 doing it, you would apply. But, again, we wrote the regs
6 based on this comment to indicate that the LEA and the
7 operator could negotiate something less.

8 --o0o--

9 BRANCH MANAGER DE BIE: So what constitutes the
10 shorter time frame, which would be the RFI amendment?
11 Basically, again in that decision tree. Is it consistent
12 with CEQA? Or is it, you know, something that could be
13 exempted from CEQA? Is it consistent with standards? And
14 is there a conflict with the permit? If CEQA is fine,
15 existing documents cover it, or it's exempt and there are
16 no issues with the standard or requirements and there's no
17 conflict with the permit, it's a 30-day process at most.

18 --o0o--

19 BRANCH MANAGER DE BIE: There was a lot of
20 discussion about a list. So let me reflect on the list.
21 Certainly one way of approaching significant change is to
22 do a list that indicates anything on this list is
23 significant and, therefore, you have to revise the permit.
24 Or another approach would be anything on this list is not
25 significant, so you don't have to revise the permit.

1 That's certainly one approach, one that staff looked at
2 and thought about long and hard and eventually did not
3 follow through on.

4 We chose to do the decision tree process, the
5 criteria of the decision making process as opposed to a
6 list. And the main reason again was it's really hard to
7 come up with a list that would be applicable in all
8 circumstances throughout the state of California. And if
9 you start sort of wiggling it down to those things that
10 might be commonly agreed upon to be less than significant
11 anywhere in the state of California, you get a very, very
12 small list in our opinion.

13 We requested stakeholders to provide us with a
14 list, and they did. And we appreciate that. And it
15 allowed us to pick that up, the list concept again, and
16 look at it anew. The list that was provided to us is
17 basically a list that had its origins in the Department of
18 Toxic Substances Control permit modification process. And
19 we became aware of that, because looking at the list, it
20 talked about storage tanks and different things which
21 usually are not issues at solid waste facilities but
22 certainly hazardous waste facilities. So we tried to
23 figure out where the list came from, and we dug down and
24 found it came from the Department of Toxic Substances
25 Control.

1 We looked at their list, their entire list, and
2 we looked at the context of that list. And in our
3 opinion, basically the items in that list would be items
4 that are found in the RFI, and not in the permit. So this
5 on your screen now is a list of typical things that are
6 required to be in the RFI and do not typically find their
7 way into the permit. So any number of those items up
8 there could be approved through an RFI amendment process
9 without triggering either a modified permit process or
10 revised permit process, because they're always usually
11 contained in the RFI.

12 We looked at the Department of Toxic Substances
13 Control process associated with their list and found it's
14 very similar to an RFI review process. There's a notice.
15 There could be a 30-day process. There's extensive notice
16 to stakeholders, which is something that's not necessarily
17 associated with our RFI process but certainly in their
18 process. And we noted that if there are issues associated
19 with the change that's being requested, the Department can
20 actually reject that change based on whatever the issues
21 that are raised. So we saw that as sort of a reactive as
22 opposed to a proactive approach that we were trying to
23 design with the RFI amendment process. But in terms of
24 timing, level of review, the type of items that the
25 Department has on their list, I think it's very, very

1 similar to what we have in our RFI amendment process.

2 So based on that, we went back to our decision
3 tree mechanism that does allow a number of changes to be
4 approved through RFI amendments. There is a comprehensive
5 list of those items in the RFI amendment or in the RFI
6 regulations, and this is a sample of them on your screen.
7 So we felt, in effect, we do have a list. And it's the
8 RFI. So that's how we responded to that comment.

9 COMMITTEE MEMBER WASHINGTON: Mark, in the RFI,
10 does it allow for public participation?

11 BRANCH MANAGER DE BIE: The RFI process that
12 exists now does not have any notice really or a hearing
13 requirement. The revised regs proposed will increase the
14 level of notice to the public. We would require the LEA
15 to at a minimum post that notice at their office on a
16 bulletin board, and then we're suggesting that the
17 operator would also post a notice at the site.

18 COMMITTEE MEMBER WASHINGTON: So in the RFI if
19 it's a site location, if they want to move to another
20 location --

21 BRANCH MANAGER DE BIE: That would be a whole new
22 permit.

23 COMMITTEE MEMBER WASHINGTON: The site location
24 as I'm reading it doesn't mean moving to a new site.

25 BRANCH MANAGER DE BIE: No. Thank you. What

1 that refers to is a description of the site location.

2 COMMITTEE MEMBER WASHINGTON: That's presently.

3 BRANCH MANAGER DE BIE: If they wanted to --

4 maybe they re-surveyed the site and wanted to fine tune
5 that, that would be what we're looking at.

6 COMMITTEE MEMBER WASHINGTON: You've been working
7 on me. You knew I was going to bring that up.

8 BRANCH MANAGER DE BIE: Thank you.

9 --o0o--

10 BRANCH MANAGER DE BIE: One of the comments we
11 got was that the significant change should be imbedded in
12 the CEQA definition. And I think our intent was to make
13 CEQA a key aspect of deciding whether something is
14 significant or not.

15 Currently, the first question that the LEA asks
16 about a change is, is it consistent with CEQA or not? We
17 maintained that, and then we try to clarify what
18 consistent means. We actually ended up rewriting the reg
19 to point over to the CEQA guidelines that has criteria
20 about substantial change and whether or not that change
21 would result in new impacts or more severe impacts or
22 would lead one to believe that existing mitigation
23 measures are ineffective.

24 So we tried to indicate that really the criteria
25 that LEAs should be utilizing in determining if something

1 is consistent with CEQA is based on the CEQA guidelines.
2 So we've reaffirmed that and added more detail to that.
3 So we think we addressed this comment by taking that
4 approach, maintaining the existing approach, and then
5 expanding on it, pointing over to specific criteria in the
6 guidelines.

7 --o0o--

8 BRANCH MANAGER DE BIE: Some stakeholders don't
9 want the added noticing of the RFI amendments. We felt
10 that to be consistent with the spirit of 1497, there
11 should be generally an increase in the transparency of the
12 permit process as well as the RFI amendment process. So
13 unless otherwise directed, we wrote the regs that would
14 actually increase the level of notice for RFI amendments,
15 but we did try to balance it. We did not go all the way
16 to one end of the spectrum where written notice would be
17 sent to all neighbors and that sort of thing that's
18 consistent with the 1497 statutory notice requirement.
19 But we did indicate that at a minimum it should be posted
20 at the office of the LEA as well as at the facility.

21 --o0o--

22 BRANCH MANAGER DE BIE: Also to allow some
23 flexibility, we wanted to indicate that the LEAs could
24 have an option to substitute a meeting. This has become a
25 bit controversial. You'll see in Ms. Sweeny's letter to

1 you that she calls this particular issue out.

2 Our intent was to allow the LEA to point back in
3 time to a meeting that took place where the same change,
4 the same issues, the same project was discussed in a
5 public setting that the LEA was present at and was
6 available to answer questions to. And so if the LEA could
7 demonstrate that indeed was the case, that within the last
8 year there was a meeting, they were involved, they
9 participated, the public had an opportunity to ask them
10 questions, that they would not need to hold yet another
11 separate meeting.

12 We did require that the LEA do the same level of
13 noticing that they would as if they were conducting a
14 meeting, but that would be noticing of the fact they were
15 processing the permit application for the revised permit.
16 So again we were trying to find some balance here.

17 We heard comment from stakeholders that why
18 should I have another meeting if, you know, four or five
19 meetings have already taken place. The public was
20 involved. So we tried to find some balance there. But
21 we're now hearing from both sides of the coin. The
22 community activist groups in the voice of Erica Sweeny
23 that she thinks if a meeting is substituted that the
24 noticing of that particular meeting should be as extensive
25 as an LEA stand-alone 1497 meeting would be noticed. And

1 then our understanding from other stakeholders is they
2 don't want that flexibility in the regs. They prefer an
3 LEA to always hold a separate stand-alone meeting for
4 every permit revision.

5 --o0o--

6 BRANCH MANAGER DE BIE: Again, we heard some
7 comment that we were going beyond the scope of 1497 and
8 including noticing and meetings for new permits. We think
9 it's consistent with what the Board asked us to do in
10 bringing in the CDI requirements. And I think it makes
11 sense. I think staff thinks it makes sense to be
12 consistent in terms of what's required in terms of
13 noticing whether it's a new or revised permit. If the
14 intent is to make sure the community is aware of it, they
15 should be aware maybe more so if it's a new facility than
16 one that's already there and is growing or changing in
17 some way.

18 --o0o--

19 BRANCH MANAGER DE BIE: Based on some of the
20 comments and then also staff's re-review of the regs, we
21 have found a few things that we would like to change when
22 the regs go out for formal review. And so we have two
23 slides here that we're referring to as the errata.
24 Basically, on page 6 of the regs, there is a flow chart
25 that would show up in the notes following the reg. And we

1 inadvertently left out a reference to the operator's
2 requirement to do noticing. I had indicated that the
3 operator would post a notice at the site. And when we
4 created that flow chart, we inadvertently left out that
5 reference. That was brought to our attention so we would
6 place that in. It does exist in the reg. It's just that
7 again in this note in this flow chart we inadvertently
8 left it out.

9 And then on page 10, we have the phrase option --
10 and this is in reference to the noticing of what would be
11 in the notice. And we had the phrase "options for
12 submitting comments, if applicable." And someone brought
13 to our attention that was a bit confusing. When would
14 comments not be applicable? When would they be
15 applicable? Our intent was to indicate in the notice how
16 the community or any other interested party could submit
17 comments, what were the options. How could they do it?
18 E-mail? Written? Verbal? What mechanism? So the
19 applicability portion of that phrase didn't seem to be
20 applicable. So we are asking to strike that before it
21 goes out for review.

22 --o0o--

23 BRANCH MANAGER DE BIE: And then just two pages
24 more. On page 14 on the decision tree, in one part of the
25 regs we use the term "not conflict," and then we in this

1 decision tree part included the term "are consistent." In
2 our view, they were sort of saying the same thing, one in
3 a negative context and one in a positive. But a
4 stakeholder indicated that it led to some confusion. So
5 we are asking to make this change so that all reference to
6 conflict or consistency with the permit would be expressed
7 in the same way.

8 And then the last change is on page 14 in the
9 decision tree. And we had intended -- well, the first
10 part with the "has" is just a typo. And then we had
11 intended to say that the EA has determined that further
12 restriction, mitigation, or conditions are necessary as
13 opposed to not necessary. So it was a matter of making it
14 a positive statement or a negative statement. So to be
15 consistent, we'll cross out the "not" and have
16 "necessary." So most of those are just to make sure we're
17 consistent throughout the regs.

18 So that is what we have to share with you in
19 terms of the overview and the main issues. And, again,
20 you can see the majority of the comments were dealing with
21 significant change as well as the noticing and the hearing
22 requirements.

23 So staff is available to answer any questions.
24 And I'm sure we have stakeholders that would want to
25 provide comment.

1 CHAIRPERSON MULÉ: We have five speakers that
2 have signed up so far. I thought we'd hear them first.
3 The first one is Larry Sweetser.

4 MR. SWEETSER: Good morning, Board members.

5 CHAIRPERSON MULÉ: Good morning.

6 MR. SWEETSER: My name is Larry Sweetser. I'm
7 representing the 22-member Rural County Environmental
8 Services Joint Powers Authority.

9 Welcome, Mr. Petersen. You're in for some
10 interesting times.

11 I do appreciate the Board and staff's efforts to
12 bring clarity to the solid waste permit process. I've
13 been involved in those myself, and there are always issues
14 that take a lot of time to be resolved.

15 A number of the items that you mentioned that
16 there hadn't been very much comment on, I think many
17 people were satisfied with a number of those, like the
18 five-year review and some of the other ones. And I think
19 we'll boil it down to just a couple key issues.

20 I did discuss with Bobbie Garcia several issues.
21 Two are minor in the package that she thought could be
22 fixed. One was the public notice on the signage. That's
23 on page 9. It's 21660.1(b). Basically just mentions that
24 notice would be posted as temporary signage. I've run
25 into some cases where that's a requirement of the use

1 permit is anything that is a sign has to be run by a
2 public works department or planning department for
3 approval. So maybe just remove that word "signage." That
4 was insignificant, but could cause problems later.

5 The other one was the alternative meeting notice.
6 I know there's going to be discussion on that concept in
7 general. I was concerned about the list that was provided
8 in there seemed to indicate to me that that list would
9 have to be provided at the alternative meeting, but a
10 couple of those points in the list actually are after the
11 permit had been submitted. And Bobbie clarified, no, that
12 list would be at the time the application was submitted.
13 Then it would be forwarded with all those items on there.
14 She thought that would be resolved.

15 The big issue -- two would be the significant
16 change issue and also the CEQA issue. I'll let other
17 people talk about CEQA. I think the definition you have
18 in there of significant change is an excellent one. It
19 does raise a serious issue, and that was one that Bobbie
20 and I could not resolve. There's no process in this whole
21 package for less than a material change. We appreciate
22 the idea of a consultation. I think with the LEA that
23 will resolve some of the issues. But still, I'm going to
24 give a couple of examples of changes I think are less than
25 non-material.

1 The definition of non-material change was it
2 would require a change to the permit and that it's a
3 physical change. There are situations --

4 COMMITTEE MEMBER MARIN: What do you mean by
5 that?

6 MR. SWEETSER: That's what the definition says.
7 A non-material change means a change that would require a
8 change that's in the definitions to the solid waste permit
9 and would not result in a physical change. If it's a
10 physical change, then it's material change. But there are
11 some examples, and I'll get to those in just a second
12 here.

13 And the examples in the situations I believe are
14 some that are so non-significant they really shouldn't
15 need any sort of approval. They may be limited, but they
16 are real out there. The first example, you have an area
17 of your facility off to the side. And you're storing
18 carts out there for your collection operations or
19 something. The operation is described in your permit. If
20 you want to put a fence around those containers just to
21 segregate the area, that's a physical change. That would
22 be, therefore, not a non-material change. That would be a
23 material change requiring to go through an amendment
24 process. Even though it's off to the area, doesn't effect
25 anything, you want to segregate it out.

1 Second example is you have many facilities,
2 you've all seen then, have bins for recycling. And the
3 map for the facility that's been approved may show there's
4 three little squares for bins. That's in the approved
5 permit you have three little squares. What if you had a
6 fourth square? Your metal bin gets too full. You want to
7 add another bin for metal. Is that going to be a
8 significant change? That's a physical change. You're
9 adding something there. That would be a physical change
10 which would not be non-material, because it doesn't meet
11 that definition. But there's no process to allow for
12 that.

13 COMMITTEE MEMBER MARIN: Larry, let me ask staff.
14 For something like that, would they actually have
15 to come? Like right now without even this, for something
16 like that, do we even know about some of those things?
17 Would they be required to let us know?

18 BRANCH MANAGER DE BIE: Generally, that kind of
19 thing may or may not be described in the RFI only. You
20 would not find the fact that a fence appears or does not
21 appear in a certain area in the permit. And when I say
22 permit, it is the document written by the LEA that
23 convenes the conditions. So you usually don't see a
24 permit to say thou shalt maintain a fence around this
25 area. That usually does not show up.

1 And relative to number of bins, usually not in
2 the permit. But you may have descriptions like that in
3 the RFI. So far, Larry is indicating RFI amendment
4 changes. And I'm not sure why he's talking about
5 non-material. Non-material only comes into the decision
6 tree when you're deciding what kind of change to the
7 permit, so there's something in the permit that needs to
8 change. But if it's not in the permit, you're in RFI
9 area. So far, I'm hearing things that would typically be
10 RFI.

11 But I must say, you may have an LEA out there
12 that wrote a permit to say you maintain a fence around
13 this area or you are limited to only three bins in this
14 area. And for him to add a fourth bin, the three would
15 need to change to a four in the permit. That could be a
16 modified permit process. It could be. But it's only
17 because something is in the permit that conflicts with
18 what he's proposing to change. That's the only reason you
19 would be looking at the permit.

20 MR. SWEETSER: One of the issues forcing this
21 package is all the clarity that's out there with permits.
22 And I've seen cases where LEAs and even Board staff have
23 said if it's not in the permit, you can't do. Again, my
24 map has three little boxes for bins, would that be a
25 change? At this point, I see no process that would allow

1 something so simple.

2 My third example, getting a little absurd here.

3 It's a bright sunny Saturday afternoon out at your

4 facility, and the sewer line breaks at your gatehouse. So

5 I'm going to bring in a porta potty to operate at the

6 facility and make it more comfortable. Under the existing

7 regulations, would that be a change? It's a change.

8 Something is happening. Is it subject to LEA approval?

9 Do I have to go through a consultation for that? I can

10 guarantee my employees are not going to be happy if I have

11 to wait 180 or 30 days to bring in a porta potty. Again,

12 we have no definition in here for what is allowable as

13 totally non-significant, or any allowance for that

14 whatsoever.

15 My proposal would be simply to trust in the LEA

16 and operator relationships that those things can happen.

17 If it does turn out something like that is a change, then

18 the operator deserves to get a violation. And then we can

19 argue whether that's significant or not and be ordered to

20 change the permit. There's still no process in here to

21 allow for something so insignificant.

22 There's also going to be some questions raised on

23 the relationship with CEQA. I can tell you from

24 experience with my permits that's been one of the most

25 significant issues is discussions between local planners

1 and Board staff on CEQA conformance and compliance. But

2 I'll let some of the other speakers address that.

3 Thank you for the time.

4 CHAIRPERSON MULÉ: Thank you, Larry.

5 COMMITTEE MEMBER WASHINGTON: Just before they
6 come up, what Larry just explained, is it really -- I
7 mean, to me, it seems as though it cannot get to that
8 point if you have a sewer that breaks or something that
9 breaks and you have to bring a porta potty. Help me out
10 to understand what he's saying. Is it significant to a
11 point to where it can really happen? Is it that minute to
12 where it gets that sticky? And these are the LEAs who are
13 violating you.

14 BRANCH MANAGER DE BIE: I would expect that if a
15 sewer line broke, and he couldn't provide sanitary
16 facilities to his employees and chooses to do it through a
17 porta potty process, one, an LEA probably wouldn't know
18 about that, because they're out once a month. So they
19 would need to stumble on it. And he would probably be
20 found in violation for not maintaining sanitary facilities
21 for employees as opposed to an RDSI violation. So it
22 would be addressed there. I would expect it would be a
23 very temporary kind of situation so, you know, within a
24 few days or whatever it would be gone. So he'd probably
25 get a State Minimum Standard violation, but probably not

1 an RDSI violation.

2 If he wanted to keep that porta potty there for a
3 long period of time, you might be looking at an RFI
4 amendment, because now he's changed what he's trying to do
5 at the site. Instead of having a bathroom facility, he's
6 trying get by with a porta potty facility. The LEA should
7 look at that and see if that's appropriate.

8 COMMITTEE MEMBER WASHINGTON: Are we talking
9 permanent or temporary?

10 MR. SWEETSER: Even if it's temporary, as I read
11 the regulations, there's no allowance to do something
12 without consulting with the LEA and going through an
13 amendment process, formal process to do anything. One of
14 the slides earlier pointed out the change in color on your
15 dozer. That's a change. There's no definition for
16 whether it's significant or not. It's a change, therefore
17 it needs an amendment. Everything you do requires an
18 amendment.

19 BRANCH MANAGER DE BIE: Let me also point out --
20 the dozer color is good. If there's nothing in the RFI,
21 and I showed you the list of things that are typically
22 found in the RFI and you didn't see dozer color up there
23 because it's not there. So you know, yeah, you can change
24 things if you've never described them. But if there's
25 something in your RFI you've described that says this is

1 what we do and how we do and you change that, then the
2 appropriate place would be looking at the need to do an
3 RFI amendment. If there's something not described, you
4 don't talk about the color of your scale house or
5 equipment or whatever, there's nothing to change in the
6 RFI. So go ahead and do it.

7 COMMITTEE MEMBER WASHINGTON: Larry, as a Board
8 member, I would be hard pressed to believe. And if you
9 came to me and said that was happening, I would have a
10 serious problem with an LEA who would violate you based on
11 something that broke and you had to bring something in for
12 human, you know, use. And I hear what you're saying. I
13 understand what you're saying. It's not there. But I
14 just want to get some clarification on that.

15 MR. SWEETSER: Believe me, if one of my clients
16 had a violation like that, I would not hesitate. I have
17 in the past recommend it come forward as an enforcement
18 action appeal. But it's pretty ludicrous to have to get
19 to that point when there's no ability to do anything
20 without a change in a formal process for an amendment.

21 COMMITTEE MEMBER WASHINGTON: Thank you.

22 COMMITTEE MEMBER MARIN: For me, it was a matter
23 of six of one, half dozen the other. On the one hand, we
24 want to be clear and provide direction. On the other
25 hand, we don't want to have so much minutia in it that the

1 only thing it creates is confusion. And, you know, it's
2 trying to find that perfect balance, you know, where
3 common sense -- it's really common sense, you know.

4 BRANCH MANAGER DE BIE: If I may, brings up the
5 list issue. So would Larry's list have broken sewer pipe
6 on it? So that's non-significant. That was part of the
7 issue that staff had, is what goes on the list and what
8 doesn't. You can't think of everything that could happen.
9 So we left it to the LEA's discretion to make a call.

10 CHAIRPERSON MULE: Thank you. Our next speaker
11 is Chuck White.

12 MR. WHITE: I still think it's Halloween. Chuck
13 White with Waste Management. Members of the Committee and
14 welcome to Mr. Peterson. We look forward to working with
15 you.

16 As Mr. Sweetser indicates, we have two major
17 areas of continuing concern with these regulations. One
18 has to do with this area of significant change, which I'll
19 expand upon. And also we believe there's some
20 inconsistencies between CEQA requirements and the way
21 these regulations spell out compliance with CEQA. We
22 think CEQA stands alone. It isn't really necessary to go
23 over and add additional language that is not necessary.
24 So we would like to -- and I'm not really the best person
25 to speak on that. My focus is going to be on the

1 significant change, and I was going to elaborate on the
2 example actually that Mark gave of changing the dozer from
3 blue to yellow.

4 And, in essence, there is absolutely on these
5 regulations no change that you can make without at minimum
6 going through a 30-day process requiring an RFI amendment
7 if there's anything in that document that's got to be
8 changed. And we're encouraged to be as increasingly
9 specific in our RFIs and explain the details. So if I
10 happen to mention my dozer was blue in that RFI amendment,
11 then I am forced if I need to change that dozer to yellow
12 to go through a minimum 30-day process.

13 And this is not the Integrated Dozer Color
14 Regulatory Board. This is the Waste Management Board.
15 This is the concern we have between the LEAs is you're
16 going to be regulating more and more activities that
17 really aren't directly related to solid waste. They're
18 only peripherally associated, like the color of a dozer,
19 for example.

20 We believe there needs to be better clarity that
21 you can make these kinds of minor modifications without
22 even going through an RFI amendment process. We offered
23 in good faith the same kind of process that the Department
24 of Toxic Substances Control uses for hazardous waste
25 facilities. They have a very extensive list of things

1 that are called minor modifications that the operator can
2 go ahead and make the change as long as notification is
3 given to the regulatory agency making the change. For
4 example, if I want to change my dozer from blue to yellow,
5 I go ahead and change it and make the notification. And
6 if anybody has a concern, you come after.

7 But this process establishes the absolute mandate
8 at a minimum that if it's mentioned in the RFI, and whoa
9 be to you if it's mentioned in the permit, because then
10 you have a 180-day process, even though it may be
11 something that is really unrelated to regulating solid
12 waste. If it's the color of a building that happens to be
13 mentioned in the permit, then these regulations require me
14 to go through a permit modification or potentially even a
15 permit revision process to change the color of a building
16 if that happens to be mentioned in the permit. It has
17 nothing to do with the regulation of solid waste. So we
18 really have a fundamental problem with the way this is
19 structurally set up.

20 We talked before this meeting and we were
21 thinking we'll go ahead with the 60-day public notice and
22 work out these problems during the public review process.
23 But this is really a fundamental problem we have, and it
24 almost is larger than -- I'm almost also going to recant
25 my agreement with my cohorts. I'm thinking this is really

1 something that needs to be fixed before it goes out to
2 public notice. You can't be regulating the color of
3 dozers or the provision of porta potties or all these
4 detail kind of things at a solid waste facility. It
5 doesn't make sense.

6 I kind of regret not bringing one of my favorite
7 books called, "The Death of Common Sense. How Regulations
8 are Strangling America." And this is almost a case in
9 point where this is a little bit over beyond the pale here
10 where you're trying to regulate any possible change that
11 might happen to be described either in an RFI or in a
12 permit. And so I'm going to leave it at that point for
13 right now.

14 COMMITTEE MEMBER MARIN: I don't want you to
15 leave it at that point. What's your proposal?

16 MR. WHITE: Well, we suggested that there be a
17 list of kinds of changes that you could go ahead and make.
18 It wouldn't mean to be an exclusive list. A list of
19 things or things like that if you made those changes, you
20 provide notice to the LEA you're making those changes. If
21 the LEA has a concern, they can initiate the permitting
22 process if they think it's inappropriate. There ought to
23 be a list of things for the most part that are so
24 insignificant.

25 And I agree with Mark that there needs to be

1 common sense. You can't necessarily have a list of all
2 the things that are out there. We listed 30 things.
3 There may be 40 or 50 things. But there needs to be some
4 kind of recognition that you can make changes as long as
5 they're not fundamentally effecting the public health and
6 safety related to solid waste. And certainly the color of
7 a dozer cannot possibly --

8 COMMITTEE MEMBER MARIN: We're going to move away
9 from the color of dozer, because I don't think -- it was
10 to prove a point. But now we're going to use that, and
11 that's going to become the 86-pages of regulations it
12 never was. We're going to move away from that one.

13 Mark, I know you went through in your report, but
14 why couldn't we have a list that is not limited to but
15 certainly provides certain guidelines? And the list -- I
16 saw the list. Why wouldn't we? What would preclude us
17 from including a list so that people that lack common
18 sense would look at it and say, yeah, this doesn't have to
19 go through.

20 BRANCH MANAGER DE BIE: We do have a list. It's
21 the RFI. Many of those items that were included in the
22 list that was provided from us based on the Toxics lists
23 are very, very similar to items found in the RFI.

24 COMMITTEE MEMBER MARIN: So it would be --

25 BRANCH MANAGER DE BIE: But my understanding is

1 that there should be a list to say not even an RFI
2 amendment review process, so the LEA doesn't even need to
3 look at this and even think about it. So we just do the
4 change. We tell the LEA. If they have a problem with it,
5 which I'm not sure what that means, then, you know,
6 something happens. So that is very much out of the scope
7 of what we were trying to do in these regs in defining
8 significant change.

9 What we're being asked with this list is to
10 define things that the LEA would not have any oversight on
11 at all as far as I can tell. We were indicating that
12 things that are in the RFI would need -- if they need to
13 change, the LEA would need to look at those and agree to
14 them.

15 If I may, the example of the building color, you
16 know --

17 COMMITTEE MEMBER MARIN: Can we move away from
18 color all together, because I don't think anybody is
19 serious about that.

20 BRANCH MANAGER DE BIE: If I may, just because in
21 some situations in urban settings, the color of the
22 building is very key in terms of avoiding mitigations.
23 You don't want, you know, certain color buildings in
24 certain kinds of development areas. So land use people
25 typically require that buildings be of different shapes,

1 sizes, colors, and that sort of thing. So changing it
2 without anyone looking at it could be a problem. That
3 would typically be a land use issue and not something the
4 LEA would put in the permit.

5 MR. WHITE: That's my point. The Board can't and
6 the LEAs can't regulate everything under the sun. They
7 need to focus on what their charge is, ensuring the
8 protection of human health, the environment, and solid
9 waste. There's other processes you'd have to go at the
10 local level through the building department to change your
11 color of your building. I'm not sure about the dozer, but
12 the point is the Board and the LEA don't have to be the
13 absolute arbiter of making every single change to your
14 facility under the sun.

15 COMMITTEE MEMBER MARIN: What I'm having a
16 problem, Chuck, and you're going to have to help me with
17 this, we're talking about significant change. Because
18 that was something that everybody thought that we needed
19 to have a pretty clear explanation of what significant
20 change is. And we're spending an hour of time trying to
21 talk about the change of the color of the dozer. Give me
22 a break. Nobody is serious about this. Let's look at
23 what we really need to look at. And isn't that what
24 triggered the whole discussion of significant change? And
25 why are we spending all the time talking about what is not

1 significant?

2 MR. WHITE: But with all due respect, if I
3 happened in my RFI to say my dozers are blue and I want to
4 change them, if I understand Mark's position, I cannot
5 change the color of those dozers unless I go through an
6 RFI amendment process if the RFI happens to specify --

7 COMMITTEE MEMBER MARIN: Would we be that anal?

8 BRANCH MANAGER DE BIE: In effect, that's what we
9 have right now in place. If you have something described
10 in your RFI and you want to change it, you have to amend
11 the RFI prior to making that change. These regs don't
12 address that. We're being asked to go beyond the scope
13 and address that.

14 MR. WHITE: Can I rest my point?

15 COMMITTEE MEMBER MARIN: Well, you know, we need
16 to deal with that. This is nonsense.

17 CHAIRPERSON MULÉ: Why can't we come up, here we
18 go, with a list of insignificant. For example, a change
19 in the manager of the operating facility. If that's in
20 the RFI currently and that person -- their staff changes
21 all the time, at least at the company I used to work at --

22 MR. WHITE: It's still happening.

23 CHAIRPERSON MULÉ: Then that would require --

24 COMMITTEE MEMBER MARIN: Madam Chair, with all
25 due respect, I'm trying to move us away from talking about

1 what is not significant versus let's talk about what is
2 really significant.

3 CHAIRPERSON MULÉ: But that's the whole point,
4 Chair Marin, is we're trying to get that.

5 COMMITTEE MEMBER MARIN: We're not getting there
6 by continuing to talk about what is insignificant. Why
7 don't we talk about what is really significant. And then
8 by default, what's not there, then we don't need to talk
9 about that.

10 MR. WHITE: We would agree. It needs to be done
11 one way or the other. We thought by listing the things
12 that are insignificant by default everything else would be
13 significant. But if you can come up with things listed
14 that are significant --

15 COMMITTEE MEMBER MARIN: To me, that makes more
16 sense.

17 MR. WHITE: -- we don't care. But there needs to
18 be a clear -- and if it's really insignificant, it doesn't
19 need to go through an RFI amendment. We don't mind
20 providing notice to the Board, to local officials that
21 we're making the change so if anybody has a concern about
22 it. But we shouldn't have to go through this
23 pre-approval, pre-auditing process any time I want to
24 raise my little finger, change a color from this to that,
25 move a bin from point A to point B. These are not

1 necessary to be in a permitting regulatory pre-audit
2 process.

3 COMMITTEE MEMBER WASHINGTON: Can we fix that in
4 a paragraph? I mean, why do we have to go through a list?
5 Can't we just say in a paragraph this is insignificant, et
6 cetera, et cetera, bye.

7 MR. WHITE: In our comment letter of September
8 9th, we gave a list. And we're willing to sit down and
9 discuss these. We came up with 30 items, things like
10 administrative, informational changes, correction of
11 typographical errors, equipment replacement or upgrading
12 with functionally equivalent equipment. These are common
13 sense things. One would think you wouldn't even need a
14 list for them, but --

15 COMMITTEE MEMBER WASHINGTON: Hey, Mark, can you
16 get a couple of great minds to come up with a paragraph
17 that would address that to say just that and be done with
18 it and put them in the regs? I mean, that would give
19 direction to the LEA that you can't go out and use this
20 against these folks or whatever.

21 BRANCH MANAGER DE BIE: Yes. It is possible to
22 do that. It's not impossible. It's a lot more difficult
23 than I would hope it would be.

24 I think there are other ways of addressing the
25 core issue here than a list or paragraph. One is almost a

1 policy statement. Are there aspects of design and
2 operation of a solid waste facility that need not be
3 looked at by an LEA? If there's common agreement there
4 are some aspects out there that an LEA should have no
5 voice in looking at at any time, then we can move forward
6 with that kind of list.

7 I think there's a process approach that we could
8 continue to use like we have with these other items is
9 that there's an initial notice. This is similar to
10 Toxics. There is a notice. And if there's an issue with
11 what's happening, that there's a way for the LEA to come
12 back at that and address it in a reactive mode, which
13 seems to be what Toxics has on their system.

14 So we could set up a system where, you know,
15 everything gets noticed to the LEA. We could highlight
16 certain key things that -- and I would take the approach
17 of indicating the things that should always be noticed
18 through an RFI amendment. And then by default everything
19 else would be just straight notice.

20 But I would propose that we look at a process
21 where there's a notice. And then if issues are
22 identified, then there's a mechanism for the LEA to go
23 back and deal with that. But if there's no issues by time
24 certain, then it's a done deal and there's no review or
25 approval required. And that seems to be similar to what

1 Toxics has set up. So we can explore that. If we create
2 that process in such a way, we could maybe move away from
3 this whole list issue and just deal with it that way.
4 But, again, there is this overarching policy decision
5 about are there things that we don't want the LEA to be
6 looking at or need to look at.

7 COMMITTEE MEMBER MARIN: But I want to move us
8 from that. I want us to concentrate on the real important
9 issues, instead of minutia, instead of things that it's
10 just a waste of time for everybody. You know, let's look
11 at what's really truly important, that's really truly
12 significant. Just look at that. I mean, we can spin and
13 spin our wheels for hours, you know, trying to deal with
14 the unimportant stuff. You know, all we need to look at
15 is what is truly a significant change. I'd much rather
16 spend our time doing that, and everything else, you know,
17 it's not important. And if it is not important, we
18 shouldn't really be spending our time on that.

19 DEPUTY DIRECTOR LEVENSON: And, Member Marin, if
20 I could comment on that. So far the comments we heard
21 today, I haven't heard anybody say they don't agree or at
22 least more or less agree with the approach of the decision
23 tree that does try to delineate what is a significant
24 change in the terms and conditions of the permit that
25 would trigger a permit revision, nor with our new proposal

1 to have a somewhat modified process, which to us those are
2 the important changes that we need to be looking at.

3 I understand the operator's concerns about what's
4 on the bottom of the scale in terms of relatively or very
5 minor changes they don't want to have to go through an
6 extended process for. As you can see, those are --
7 examples that are being brought up are things that are
8 pretty minor. The current version would have them go
9 through an RFI amendment, if it's described in the RFI.
10 But Mark has proposed something that we can come up with a
11 process wherein the LEA is notified and then within x days
12 has to get back if there's a problem. We could try to
13 work on that.

14 COMMITTEE MEMBER MARIN: I think that would be
15 the way to go. This is nonsense.

16 DEPUTY DIRECTOR LEVENSON: I want to reiterate
17 what you said. These are the very minor issues. We're
18 focusing this rulemaking on trying to define those changes
19 that rise to the level of a permit revision and also
20 require associated hearing and noticing requirements which
21 is the original driving force behind 1497.

22 COMMITTEE MEMBER MARIN: That's where we should
23 go.

24 MR. WHITE: We want clarity as well. We want to
25 know those kind of changes that require a permit revision

1 and 180-day process, a permit modification and 180-day
2 process, and RFI amendment and a 30-day process, and those
3 things that should be totally below the radar screen that
4 really doesn't need to be involved.

5 And the question is procedurally how do we go
6 from here? Do we change these changes and clarify this as
7 we go forward with public notice? Or do you pull back and
8 go through some more workshopping and try to scope this
9 thing out on a more informal basis? It would be nice if
10 we could come back before the Board or Committee with some
11 options. What does a list of insignificant changes look
12 like? What does a list of significant changes look like?
13 How are some different ways you could approach this thing
14 so we can talk about it without being forced into a
15 mandatory rulemaking process that once you go out to
16 public notice, for better or worse, you're stuck to
17 because that's what the Administrative Procedures Act
18 requires.

19 COMMITTEE MEMBER MARIN: Do we have a timing
20 challenge before us, or can we take the extra time on
21 coming up with some of these lists?

22 DEPUTY DIRECTOR LEVENSON: Board Member Marin,
23 what I would propose -- and it may not be quite what Chuck
24 is suggesting, is we work with the stakeholders with your
25 direction over the next month or so to incorporate at

1 least an option for that in what goes out in the 60-day
2 comment period. I don't know that another workshop is
3 going to solve anything with this. This issue has been on
4 the table.

5 You know, one reason we went down the decision
6 tree process is because people have attempted to define
7 significant change for 10 or 15 years, and it's been
8 virtually impossible to come up with a definition that
9 systematically incorporates significant change. So the
10 decision tree process to us lays out criteria that allow
11 the LEA to come to that determination of what is truly
12 important and triggers some kind of change.

13 But I'm certainly willing to have us work with
14 stakeholders over the next month or so and incorporate --
15 we've done this in other reg packages in the draft and
16 have some kind of optional section that would go out in
17 the -- for the formal rulemaking and solicit comment on.

18 COMMITTEE MEMBER MARIN: I would much rather go
19 that route.

20 But let me add something, because I know that one
21 of the most difficult things is when our own language is
22 vague. And if we attempt to come up with some regulation
23 and leave some vagueness in there, the purpose of the
24 regulation is non-existent. It's not there.

25 And the reason why I said that is because there's

1 some language there, if I recall, that talks about each
2 individual facility may be different. And, therefore,
3 what is significant for one may not be significant for
4 another. And while I would tend to agree with that, the
5 reality is that from the percentage perspective, if you
6 will, if 25 percent increase in capacity -- let me just go
7 50 percent increase capacity, whether it's a small
8 facility or large facility, 50 percent increase, to me,
9 that would be a significant. I don't care whether you're
10 a small facility or a large facility. It's pretty
11 significant in my -- that may not be the case. But there
12 are certain things that would be, I would think,
13 independent of each facility that across the board we
14 should be able to make a statement.

15 And I think that people are looking for some of
16 that direction, that there is more clarity. Otherwise,
17 it's every single one change and every single facility,
18 you know, would lead to a revision or to go through the
19 whole process that we have before us. And if we're
20 attempting to have it streamlined, this is not the way to
21 get us there.

22 MR. WHITE: I would suggest you have these two
23 volumes of regulations that are fairly extensive and
24 getting more prescriptive all the time. If you have a
25 facility that you have to make a change that effects the

1 description of how you're complying with that regulation,
2 then that change either ought to require a permit
3 revision, permit modification, or RFI revision. But if
4 it's a change that effects no way anything that's in your
5 regulations, then I would suggest if it doesn't warrant a
6 regulation, it doesn't warrant a mandatory change.

7 I don't mind making that change and having to
8 notify even the color of a dozer. Any change I make, if I
9 can notify the LEA and if they have a concern, we can work
10 with them. But I just don't really want to have us locked
11 into having to notify -- go through some kind of
12 pre-approval process on every last nut and bolt of a
13 facility.

14 It's just really not -- and it raises the point
15 of competition. For example, if you're regulating things
16 at my solid waste facility, and simply because I have a
17 solid waste facility permit, that aren't regulated by this
18 Board, but the same kind of activity down the street
19 that's not at a solid waste facility can make those
20 changes all the time, it's not fair to the person that's
21 doing that same kind of non-solid waste activity, whether
22 it's an exempt activity, whether it's something else that
23 doesn't effect the management of solid waste. Why
24 shouldn't I be able to make that change the same way the
25 facility down the street that's not a solid waste facility

1 can do?

2 CHAIRPERSON MULÉ: So, Chuck, you're suggesting a
3 notification only?

4 MR. WHITE: Yeah. We make a change to anything
5 that's in a RFI -- and really it's to your interest. You
6 want us to be as explicit as possible of things we're
7 doing at the facility and to get ever more detail. If you
8 think about it, if you require us to go through a change
9 all the time, it's going to create the opposite effect.
10 We're going to try to do everything we can to minimize
11 what we're describing in the RFI. We really don't want to
12 do that. We want to describe everything as long as we can
13 make these changes within reason. And we need to have
14 some clarity on what things require a permit revision,
15 modification, RFI modification, stuff that is below -- not
16 subject to your regulation at all, it shouldn't require
17 yours or the LEA's review and approval.

18 DEPUTY DIRECTOR LEVENSON: My one response to
19 that, Chuck, would be if we develop a list of things that
20 are below the RFI amendment threshold level, however you
21 want to characterize that, and you do notify the LEA,
22 there has to be some mechanism whereby the LEA can
23 respond. What if the LEA does determine -- let's go back
24 to the color. The color was important for cooling effects
25 and -- well, that's a land use issue.

1 MR. WHITE: As long as it's reasonable to this
2 Board, I'm okay with that.

3 COMMITTEE MEMBER MARIN: Can I ask one question?
4 Regarding this regulation, I know that the LEAs were an
5 intimate part of the development of this. Did we hear
6 from them some of the things we're hearing here? Do we
7 have any LEAs here present?

8 BRANCH MANAGER DE BIE: Let me assure you that we
9 worked with LEAs on the reg package. Patty Henshaw from
10 Orange County, Greg Pirie from Napa County, Rebecca
11 Lafreniere from San Diego all participated on developing
12 the regs. We did have extensive input.

13 MR. WHITE: Thank you.

14 COMMITTEE MEMBER WASHINGTON: Before Chuck
15 leaves, on the public notice and information meeting
16 requirements, what is Waste Management's position? I'm
17 trying to find out who's against on the new permits having
18 a hearing.

19 MR. WHITE: That's a difficult issue. I assume
20 you're referring to if there's a previous public meeting
21 involving a change in the past, can that substitute for a
22 permit modification in the present? And I understand
23 there is a desire of some groups that want to have it
24 be -- the old meeting in the past has to meet exactly the
25 same standards as if you were to hold a meeting today.

1 The problem is you can't go back and fix the past. As
2 long as it's reasonably consistent, as long as the issue
3 was addressed, I would think that should be sufficient to
4 deal with it.

5 The key is, was there a meeting? Was the issue
6 discussed? Was it available for comment period? Does it
7 reasonably -- and I hate to think we have to write
8 regulations describing what would be reasonably consistent
9 and reasonably inconsistent. But the idea, was the issue
10 previously discussed in a public meeting? And that I
11 would think should be sufficient, without having to go
12 through a detailed list of all the things that that
13 previous meeting had to deal with and cover.

14 CHAIRPERSON MULÉ: Was a public meeting held by
15 another public entity, whether it was a Planning
16 Commission or Board of Supervisors --

17 MR. WHITE: Exactly?

18 CHAIRPERSON MULÉ: To address this particular --

19 MR. WHITE: Because the meeting might have been
20 for the facility, but now we're getting into the very
21 detailed issues that might not in detail have been covered
22 in the previous meeting, but the general facility concept
23 was covered.

24 COMMITTEE MEMBER WASHINGTON: But the problem has
25 been at these Board of Supervisors and these, whoever,

1 regional commissions are meeting at a time when folks
2 can't come to the meeting. That has always been the issue
3 here. So I think it's very significant to have it.
4 Because, I mean, if you're doing -- your permit is going
5 to be, you know, pass muster with those agencies anyway, I
6 don't see why you can't have a public meeting. It don't
7 have to be to the extent of that. But to let the folks
8 know. We're talking about a new permit here. This is not
9 a revised permit or --

10 MR. WHITE: New permit, I don't have any problem
11 with that. Even a revision, if it's a significant
12 revision --

13 COMMITTEE MEMBER WASHINGTON: I'm talking about a
14 new permit.

15 MR. WHITE: You get into RFI amendments. You get
16 into permit modifications that are relatively minor in
17 scope.

18 CHAIRPERSON MULÉ: Do you understand what Board
19 Member Washington is requesting? He's requesting a
20 special -- are you requesting a special meeting under 1497
21 for a new permit?

22 COMMITTEE MEMBER WASHINGTON: Is that what this
23 public notice and information meeting requirements, Mark,
24 is saying?

25 BRANCH MANAGER DE BIE: The current permits would

1 require the LEA to conduct a special stand-alone meeting
2 for revised permits per 1497. The statute says any time
3 they revise it, they have to have a meeting. And per the
4 Board direction, new permits would also be stand alone --

5 COMMITTEE MEMBER WASHINGTON: Why wouldn't we
6 have a --

7 MR. WHITE: You have to.

8 BRANCH MANAGER DE BIE: But we've also included
9 some language about being able to substitute previous
10 meetings. So if the wish is to maybe remove that
11 flexibility for new permits, maybe retain it for revised,
12 we could look at that. But we did try to find a balance
13 there to be able to say if the Board of Sups heard this
14 and talked about it, the LEA having another meeting six
15 months later doesn't really make sense. At least that's
16 what we were hearing from the stakeholders.

17 COMMITTEE MEMBER WASHINGTON: Because I want to
18 make sure I'm clear. Because I'm not going to support
19 anything that does not allow the public to participate.
20 And having meetings at 9:00 in the morning does not say
21 that was a public hearing. I mean, we have to have these
22 hearings at a time when people can voice their concerns.
23 We're a public Board, and we should have the public's
24 interest at heart here. If that's not what I'm hearing,
25 then I have a problem with this. And you probably can get

1 it done without me. But I'm going to have a serious
2 problem knowing the public is not participating in any new
3 permits coming into their neighborhoods.

4 MR. WHITE: I would be reluctant to have a carte
5 blanche automatic rule that you always have a hearing. If
6 this has been adequately discussed at a previous meeting,
7 that ought to be able to be a substitute. I mean, there's
8 got to be common sense.

9 COMMITTEE MEMBER WASHINGTON: How do you do that
10 when 90 percent of the folks are at work when you're
11 having this public meeting? How do you justify that?
12 Do people have to take off their jobs to come to a
13 hearing?

14 MR. WHITE: The local government -- I can't have
15 control over when the local government -- we would
16 certainly work with local government to encourage them to
17 have a meeting at a time that is most accessible to the
18 people within that jurisdiction. But why should this
19 Board go in and mandate regulations on something that is
20 really a matter of public concern?

21 COMMITTEE MEMBER WASHINGTON: It is a concern.
22 We're a public Board.

23 MR. WHITE: I didn't come here to argue with you.

24 COMMITTEE MEMBER WASHINGTON: It's not an
25 argument. I want to understand this, because I'm sitting

1 here and I'm not understanding how you don't understand as
2 a public Board we're obligated to make sure the public's
3 best interest is at heart. And that's through the health
4 and safety of the community.

5 MR. WHITE: We have cooperated numerable times to
6 have hearings to every time and we deal with it typically
7 on a case-by-case basis. But to say you're going to
8 have -- and the Board in its wisdom at some point in time,
9 even though there has been a previous meeting, decided
10 they wanted to hold another meeting on your own volition.
11 That's up to you, if you feel there's a need to do that.
12 But just to go in and to say automatically that you know
13 it's just --

14 COMMITTEE MEMBER WASHINGTON: That's fine.

15 MR. WHITE: Thank you.

16 CHAIRPERSON MULÉ: Thank you, Chuck.

17 Our next speaker is Chuck Helget.

18 COMMITTEE MEMBER MARIN: Who is he representing?

19 MR. HELGET: Chuck Helget.

20 COMMITTEE MEMBER MARIN: Do you know, Mr.

21 Washington, who he's representing?

22 MR. HELGET: I allegedly represent Allied Waste,
23 but apparently corporate headquarters doesn't know that.
24 I'm sort of persona non grata with two Board members.
25 Picking on a sick man, I can't believe it.

1 That was a long testimony, and I think the only
2 point I want to make without going through all this again
3 is that the list is not an insignificant issue for us. It
4 is maddening for us to have to go through a six-month
5 process right now. And that process I think by these
6 regulations has become shorter. Because we have a
7 gentleman named Neil Moore leaves our operation and
8 someone comes in. And we have to file an RFI amendment
9 for that. And then we started looking at the RFI and all
10 these other issues pop up, this happens. It happens quite
11 regularly. It shouldn't happen in a reasonable process,
12 but there are all sorts of different interpretations that
13 occur currently. Vagueness and in human nature require
14 that.

15 So I think I would suggest that a list that takes
16 us out of that loop is going to be helpful for us. And
17 it's not that we don't think the significant change issue
18 is important, but I think we've come a long way in that
19 area. And there's not a huge amount of disagreement on
20 the direction staff is taking on that.

21 Mark mentioned earlier that he appreciated the
22 fact that we submitted a list. And I would submit he
23 probably didn't appreciate it quite enough or he would
24 have included it in the regulations. But I think that's
25 one of the main points that I wanted to make.

1 And with that, Chuck went through this in detail.

2 And I appreciate him coming up and taking all the
3 discussion.

4 On the issue that you discussed about noticing
5 for new facilities, our position would be certainly if
6 you're doing it for revised permits, then it makes sense
7 to do it for new facilities just as well. I'm not sure
8 that I have a disagreement with you on that issue at all.
9 Thank you.

10 CHAIRPERSON MULÉ: Thank you, Chuck.

11 Our next speaker is Don Gambelin.

12 MR. GAMBELIN: Good morning, Board members.
13 Donald Gambelin, Norcal Waste Systems. I kept trying to
14 figure out where to start, because it kept changing the
15 more you talked.

16 I think one of the concepts we've been talking
17 about is something we introduced, Norcal, in a comment
18 letter way back when there was some informal workshops.
19 That's the idea of discretionary versus non-discretionary
20 decisions that need to be made. Discretionary is going to
21 be any one of those items where an LEA should be involved
22 in whether or not something should be approved to be
23 changed, added, whatever, modified to a facility.
24 Anything that is non-discretionary are these things that
25 Chuck Write for instance has suggested that just a

1 notification. We've done this. You don't have to be
2 involved. There's no potential issue here. We can make
3 those determinations ahead of time.

4 Everybody argues that all facilities are so
5 different that there's no way we could be consistent
6 across the state. And I submit that is exactly untrue.
7 I've heard the same argument from my compliance managers
8 at Norcall, which I oversee. For years, we saw how San
9 Francisco was so unique as a transfer station. It
10 couldn't possibly be doing compliance like our operation
11 up in Marysville. And lo and behold when last year I
12 undertook an effort to make things consistent from a
13 compliance standpoint across all of our facilities,
14 everybody figured out there's no real difference between
15 any transfer station, any landfill, or anything else.

16 I've been around the country. I've been in
17 foreign countries. I've seen every single transfer
18 station look exactly the same. They are absolutely boring
19 to me at this point, because there is no difference to
20 them. Landfills, similarly. Composting facilities,
21 similarly. So I don't think it's that difficult to come
22 up with a list of things that are significant or
23 insignificant. I know across the state when we've gone
24 through CEQA permitting processes on our facility, there
25 are four things that come up: Noise, odor, litter, dust.

1 Everything always consistant every single time.
2 Traffic -- I'm sorry. Five. Noise, odor, litter, dust,
3 traffic. There are fives things that always come up. So
4 anything that's not noise, odor, litter, dust, traffic to
5 me has a good chance of being insignificant,
6 non-discretionary.

7 If you were to approach this regulatory package
8 as discretionary or non-discretionary, you become more
9 consistent with the way processes work through rest of the
10 agencies, local agencies across the state, State agencies,
11 special districts, so on and so forth. What that does is
12 brings consistency from an operator standpoint and
13 stakeholder standpoint. More importantly, it brings
14 consistency for the public. The public knows what the
15 process is going to be. If we go through this package
16 right now, the public is going to have no idea from one
17 permit to the next, from one change to the next what the
18 process is going to be for that particular change.

19 I don't know that that meets the intent of 1497.
20 And as an operator, I'm concerned that it certainly
21 doesn't benefit me. Because at some point then I could
22 have a bust in that process, whatever it may be, and then
23 we're subject to some sort of litigation or action in
24 court. And that's something I think we can avoid here.

25 You know, 1497 set out to define significant

1 change. And I was pretty excited about that, because
2 after 15, 16 years of the Integrated Waste Management Act
3 and nobody understanding what significant versus
4 insignificant is, I thought finally a legislator was going
5 to force us to make that definition.

6 So we've put a definition in there. And that
7 definition is basically at this point whatever the LEA
8 thinks is important. So exactly how far have we come?
9 We've come just about nowhere.

10 You know, I was reviewing other aspects of Title
11 14, and the Waste Board actually defines something very
12 similar years ago. A waste tire facility has the aspect
13 of substantial change in it. Now, why is this substantial
14 versus significant? I don't know. If you talk to any
15 attorney, they're going to tell you it's pretty much the
16 same thing. A substantial change to a waste tire facility
17 is one that would effect -- negatively effect the
18 environment or public health and safety. It's already
19 been defined. Why shouldn't we take that definition out
20 of the waste tire facility and apply it here? And we can
21 use significant versus substantial to make sure we're in
22 compliance with 1497. But it's not difficult. The Waste
23 Board has already done it and they did it a number of
24 years ago.

25 COMMITTEE MEMBER MARIN: Did we consider that,

1 Mark?

2 BRANCH MANAGER DE BIE: Yes. Don brought that to
3 our attention. We looked it very seriously, and we
4 decided that that's what we're doing. That by indicating
5 substantial through our reference to CEQA, we're doing
6 that.

7 MR. GAMBELIN: There's some detailed issues that
8 we'll certainly get to how CEQA works or doesn't really
9 work that well in the way it's laid out here. And I was
10 certainly prepared to -- I'll spare you unless somebody
11 wants to hear it. But I was certainly prepared to walk
12 you through the process of how the location of a porta
13 potty at a facility could arrive at your level for a
14 revision to a permit given this decision tree.

15 COMMITTEE MEMBER MARIN: I will venture to
16 disagree with you. I don't think staff would bring that
17 thing to us. I can guarantee you that.

18 MR. GAMBELIN: They do it with a certain change
19 in the draft regulations. That is in 21620 CIWMB change
20 in operation, any applicant proposing to make a change to
21 the facility -- okay. They've eliminated the word
22 "significant." So it's "a change." And if you read the
23 definition of change, it's any change to facility layout,
24 to procedures, to personnel. So procedures, if somebody
25 has to walk another 100 feet to a porta potty, that's a

1 change to procedure. And it can arrive at a level to a
2 revision of a permit.

3 Because you can have an LEA walk that through,
4 and all of a sudden it's a significant CEQA issue, and
5 then a significant design -- or not even a significant
6 design change. Just a design change. And lo and behold,
7 we're in the decision tree. We're at the permit revision
8 level. That, to me, seems we've gotten to the level of
9 trying to regulate minutia and missing, as you said, Chair
10 Marin, the big picture. What really is significant? I
11 don't think it's that difficult for us to come up with
12 those items that are significant for public health and
13 safety and the environment.

14 COMMITTEE MEMBER WASHINGTON: I think, Don, you
15 guys' points are well taken. I came up with the words
16 "unintended consequences." And that's what I think you
17 guys are saying, that with these regs, there could be some
18 unintended consequences that could take effect. So points
19 are well taken with that.

20 And I believe that we all get it, and even though
21 what you read is certainly in there. We would have to fix
22 that and make sure that, you know, there is no unintended
23 consequences against a porta potty being brought on the
24 facility.

25 MR. GAMBELIN: And my experience is that if

1 there's a potential for an unintended consequence,
2 somebody will experience that unintended consequence. And
3 I don't think we need to be in that position here. I
4 think we can do a better job than that.

5 You know, let's talk turkey, I think. The
6 operator's hands are tied as far as permitting, running a
7 facility. What they have to do in a permit revision and
8 RFI amendment, who knows what because it's very nebulous
9 and often ambiguous as to what process we'll be subject
10 to. So our hands of tied at the whim of an LEA or Waste
11 Board staff.

12 I think we would have a better regulatory
13 package, a better process, a better ability for the public
14 to participate properly if everybody's hands were tied so
15 we all had a very similar process every time we walked
16 into something, whether it be discretionary change, or
17 whether it be a non-discretionary change. But let's tie
18 that process down. Certainly is fair. It certainly is
19 more understandable to the public.

20 I want to just comment -- and I'm going to differ
21 probably than some of my colleagues. But on the 1497
22 hearings, I believe the law says the LEA shall hold a very
23 specific meeting. I think I'm entitled to that meeting.
24 And we certainly wouldn't want a reg that tries to
25 circumvent that. As an operator, I don't benefit from any

1 circumvention of regulation. I'd like to see it comply
2 with the law. If people would like to see a substitute
3 meeting, change the law.

4 Any questions? Otherwise, I'll sit.

5 CHAIRPERSON MULÉ: Thank you, Don.

6 Our final speaker is George Eowan.

7 MR. EOWAN: Good morning -- afternoon.

8 CHAIRPERSON MULÉ: Good afternoon.

9 MR. EOWAN: I'd like to also extend my welcome to
10 Mr. Petersen. I was thinking as we were going through
11 this -- by the way, George Eowan, California Refuse
12 Removal Council -- that Gary probably is going, "Wait a
13 second. What happened to that last 18 years when we
14 talked about this before?" It's absolutely the same
15 issue.

16 And I do want to extend, you know, all of our
17 appreciation to the staff on this, because it has been 18
18 years since this came up before. And I don't know that
19 we're going to find a perfect solution to this this time
20 either. So whether it's de ja vu all over again or not,
21 what we're trying to do it move this issue forward.

22 And I think the intent of 1497 was around
23 significant change because of the need to notify those
24 folks around the facilities what's going on when there is
25 a significant change. So the public meeting part of it I

1 think is very, very important. And we would -- you know,
2 whether it's an evening meeting or not, we're fine with
3 that as far as CRRC is concerned. And I don't think
4 really there is a big issue there.

5 On the significant change part, I think if we can
6 come up with a list that maybe has both. Maybe it has the
7 insignificant and the significant piece along with this
8 decision tree that Mark has come up with. You know, I
9 think that's moving the issue forward. I don't think we
10 can expect that any combination of that or any particular
11 list is going to solve the problem. You still have to
12 have human decision making. We like the idea that the LEA
13 is involved.

14 Now on the LEA part, consistency is really,
15 really apparent. This speaks not only to the issue of the
16 permit side, but also to the enforcement side. So no one
17 has brought up the issue of random inspections and
18 surprise inspections and so forth. But we think that's
19 fine to go ahead and do that. But you ought to also
20 include a training aspect to that. There ought to be some
21 kind of consistency on training and inspections. Because
22 if we don't have that, you're going to have this random
23 inspection. And it's going to mean one thing in one place
24 and another in another place. So really we don't know how
25 much training they get. We know they get training. But

1 we'd like to see that brought up as a part of the random
2 inspections. That's it. Thank you.

3 CHAIRPERSON MULÉ: Thank you, George.

4 Okay. Go ahead, Board Member Washington.

5 COMMITTEE MEMBER WASHINGTON: Thank you, Madam
6 Chair.

7 Mark, and maybe Marie or Mike can answer this for
8 me. The word "shall" and "must," I remember in the
9 Legislature we had to deal with that in some legislation.
10 And I want to get your legal opinion in terms of what is
11 the teeth in "shall" and "must." Because I don't think a
12 lot of people understand a "shall" can certainly be
13 challenged in court. And a "must" is an absolute. If I
14 remember our counsel, we had like 400 lawyers dealing with
15 this stuff over in the Legislature. Is that true too
16 today in terms of if someone wanted to challenge something
17 in court because it says "shall" or that was a definite
18 "must" in there under random inspections?

19 CHIEF COUNSEL CARTER: "Shall" is a mandatory
20 word. So "shall" would require it be done.

21 COMMITTEE MEMBER WASHINGTON: And then "must,"
22 what's the --

23 CHIEF COUNSEL CARTER: "Must" can be subject to
24 interpretation. It doesn't have the mandatory nature, but
25 certainly it could be interpreted that way.

1 COMMITTEE MEMBER WASHINGTON: Okay.

2 COMMITTEE MEMBER MARIN: I think that first of
3 all, you know, we never praise our staff enough. You
4 know, to have them come up with everything they have come
5 up so far, given all the constraints, I think it's pretty
6 remarkable. And you know, Mark, I don't know that I
7 personally have given you kudos, but I really appreciate
8 it. We're pulling you in ten different ways. And our
9 wonderful colleagues from the industry, they're pulling
10 you in other ways and the LEAs and everybody. This
11 process, while painful, you know, to everybody involved, I
12 think it leads us to a much better product at the end of
13 the day, one that we can hopefully live with and buy.
14 It's not there quite yet. I think we're fast approaching
15 that.

16 I want to believe we will be able to come up with
17 a list of four absolute significant, you know, changes and
18 then a list of the insignificant, what that means. So if
19 we could do that within the next month. Do you think that
20 we might be able to do that without necessarily calling
21 for another workshop? I mean, I think we've discussed
22 this pretty significantly ourselves. This has not been
23 insignificant, I should tell you.

24 DEPUTY DIRECTOR LEVENSON: A couple of comments.
25 Certainly, we anticipated this would be the primary topic

1 today. I think that, as I indicated before, we're willing
2 to sit down with stakeholders and try to come up with a
3 list of those changes that are so minor, whatever word you
4 want to use to characterize it, they just would not be
5 subject to the RFI amendment process.

6 I would caution you and everyone, I don't think
7 that's going to be as easy to come up with a definitive
8 list as might seem from the discussion today, but we'll
9 try. Part of that, though, in my mind and I think in
10 staff's mind in general is there needs to be a definitive
11 process for the LEA to receive that notification of
12 Condition A that we've all agreed is on the list and be
13 able to respond to in this particular case I think that is
14 something that requires an RFI amendment. So we'll have
15 to look at that as part of this package.

16 In terms of coming up with a list of what are
17 significant changes, I think that is much, much more
18 difficult to do than anyone would expect. This is a topic
19 that has been tried. People have tried to come up with a
20 definition of significant change. It has a list for years
21 and years and years. That's why we have the process here.
22 The process tree that lays out criteria that the LEA could
23 look at and try to make some decision. As Don Gambelin
24 said, he said there's a chance that these won't be
25 significant. That's the issue here. They're

1 site-specific issues, but we will try. I just want to
2 kind of lay out what I expect --

3 COMMITTEE MEMBER MARIN: No. I appreciate that,
4 Howard. But by the same token, we have to start
5 somewhere. And I think by having -- if we're thoughtful
6 and we consult with the people most impacted and we get
7 the input from the LEAs, I would challenge all of us to
8 come up with a product that we can live with. I think we
9 can reach it. I really believe that.

10 You know, on top of everything else, there is a
11 degree of trust, you know, in the judgment of the people
12 that are going to be making some of these decisions, the
13 LEAs. But there's judgment going on right now. I mean,
14 at the end of the day, we have to rely on the good
15 judgment of some of these people that are going to be
16 making some of these calls. That's why we need to include
17 them as well.

18 But if we get people from the industry and LEAs
19 to work with us in those lists, you know, I think we're
20 going to be forced to come up with something that we all
21 can live with. That's what this process is all about.

22 DEPUTY DIRECTOR LEVENSON: If I can seek some
23 clarification or direction from the Committee in terms of
24 timing and process. I would propose that we go ahead and
25 work over the next month or so with various stakeholders

1 to try to come up with that list and that process. And
2 put that in as an option or some substitute language in
3 what we go out with, what we send over to AOL to go out
4 for 60-day process, rather than returning to the Committee
5 again with a discussion like this. I don't know if that's
6 okay with the Committee.

7 CHAIRPERSON MULÉ: That's fine with me. If we
8 work over the next 30 days in coming up with this list or
9 with a notification-only level, we can do that and then go
10 out for the 60-day notice and just move this process
11 along.

12 I, for one, want to move this process along. We
13 can, you know, discuss this ad nauseam, but I think --
14 or significantly discuss it. But I think it's time that
15 we, you know, just start moving this whole process along.
16 I don't want to delay it too long. That's why I think if
17 we take the next 30 days to come up with a list and then
18 go out for our 60-day notice, if that's the agreement of
19 the Committee, that's what I would like for us to do,
20 Howard.

21 COMMITTEE MEMBER WASHINGTON: Madam Chair, just
22 let me add. I want to attach myself to the comments that
23 Ms. Marin talked about the staff. And I want to go
24 further to talk about the stakeholders and the public at
25 large. All the efforts they put in this has been very

1 significant.

2 I'm not that far from -- and I don't know in
3 terms of, Howard, who you contacted with getting this list
4 of insignificant or unintended consequences items. But I
5 don't know if a workshop -- so you're saying a workshop
6 is not necessary. Because now in terms of doing this --

7 CHAIRPERSON MULÉ: No. Not necessarily.

8 COMMITTEE MEMBER WASHINGTON: Who all would you
9 contact? Would it go out as though you said everybody
10 come and bring us ideas on what are unintended
11 consequences, or are there a few people that would be
12 addressing? I mean, it just can't be Waste Management's
13 decision and thereby live with it, because there are other
14 folks out there.

15 COMMITTEE MEMBER MARIN: Who's Waste Management?

16 COMMITTEE MEMBER WASHINGTON: Used to be Chuck
17 White.

18 DEPUTY DIRECTOR LEVENSON: Mr. Washington, I
19 think what we could do and we'll have to talk about this a
20 little more, but probably have a specific day where we
21 have an open working group meeting, as opposed to formal
22 workshop.

23 COMMITTEE MEMBER WASHINGTON: I just don't want
24 it to be something where you just minimize. You want
25 everybody so we won't have to have -- when we get down to

1 the process, somebody comes and say, "I wasn't informed,
2 but I have ideas." So thank you, Madam Chair.

3 CHAIRPERSON MULÉ: I agree with you, Board Member
4 Washington.

5 And again, I just want to echo the comments of
6 the other Committee members. I've been to a number of
7 these workshops and meetings, and our staff has done an
8 outstanding job. They have listened to the stakeholders.
9 I think the stakeholders will agree there were a number of
10 issues that came up throughout the process, and our staff
11 has attempted to address those. And they have addressed
12 many of the issues. We still have a few to work on, but I
13 think we have come a long way in this process. And so,
14 again, I want to commend staff. I want to commend all the
15 stakeholders and thank you for all of your input.

16 So I believe our direction as a Committee is we
17 want to work with the stakeholders for another 30 days on
18 this list and -- or these lists, and then put this out for
19 60-day comment after the 30 days. So is that okay? Okay.
20 Good. All right.

21 Thank you, everyone. Are there any other members
22 of the public that would like to speak to the Committee?
23 With that, this meeting is adjourned. Thank you, all.

24 (Thereupon the California Integrated Waste
25 Management Board, Board of Administration

1 Permitting and Enforcement Committee

2 adjourned at 12:33 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 21st day of November, 2005.

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